TO AUTHORIZE FUNDS IN FISCAL YEARS 1986 AND 1987 FOR CARRYING OUT THE NATURAL GAS PIPELINE SAFETY ACT OF 1968 AND THE HAZARDOUS LIQUIDS PIPELINE SAFETY ACT OF 1979

(99-22)

HEARING

BEFORE THE

SUBCOMMITTEE ON
SURFACE TRANSPORTATION

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 2092

TO AMEND THE NATURAL GAS PIPELINE SAFETY ACT OF 1968 AND THE HAZARDOUS LIQUID PIPELINE SAFETY ACT OF 1979 TO AUTHORIZE APPROPRIATIONS FOR FISCAL YEARS 1986 AND 1987, AND FOR OTHER PURPOSES

APRIL 30, 1985

Printed for the use of the Committee on Public Works and Transportation

U.S. GOVERNMENT PRINTING OFFICE
51-421 O WASHINGTON : 1985

H641-47

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

JAMES J. HOWARD, New Jersey, *Chairman*

GLENN M. ANDERSON, California
ROBERT A. ROE, New Jersey
JOHN B. BREAUX, Louisiana
NORMAN Y. MINETA, California
JAMES L. OBERSTAR, Minnesota
HENRY J. NOWAK, New York
ROBERT W. EDGAR, Pennsylvania
ROBERT A. YOUNG, Missouri
NICK JOE RAHALL II, West Virginia
DOUGLAS APPLEGATE, Ohio
RON de LUGO, Virgin Islands
GUS SAVAGE, Illinois
FOFO I.F. SUNIA, American Samoa
DOUGLAS H. BOSCO, California
JIM MOODY, Wisconsin
ROBERT A. BORSKI, Pennsylvania
JOE KOLTER, Pennsylvania
TIM VALENTINE, North Carolina
EDOLPHUS TOWNS, New York
WILLIAM O. LIPINSKI, Illinois
MICHAEL A. ANDREWS, Texas
J. ROY ROWLAND, Georgia
ROBERT E. WISE, Jr., West Virginia
KENNETH J. GRAY, Illinois
CHESTER G. ATKINS, Massachusetts
PETER J. VISCLOSKY, Indiana
JAMES A. TRAFICANT, Jr., Ohio
CARL C. PERKINS, Kentucky

GENE SNYDER, Kentucky
JOHN PAUL HAMMERSCHMIDT, Arkansas
BUD SHUSTER, Pennsylvania
ARLAN STANGELAND, Minnesota
NEWT GINGRICH, Georgia
WILLIAM F. CLINGER, Jr., Pennsylvania
GUY MOLINARI, New York
E. CLAY SHAW, Jr., Florida
BOB McEWEN, Ohio
THOMAS E. PETRI, Wisconsin
DON SUNDQUIST, Tennessee
NANCY L. JOHNSON, Connecticut
RON PACKARD, California
SHERWOOD BOEHLERT, New York
TOM DeLAY, Texas
SONNY CALLAHAN, Alabama
DEAN A. GALLO, New Jersey
HELEN DELICH BENTLEY, Maryland
JIM LIGHTFOOT, Iowa

Subcommittee on Surface Transportation

GLENN M. ANDERSON, California, *Chairman*

ROBERT W. EDGAR, Pennsylvania
NICK JOE RAHALL II, West Virginia
DOUGLAS APPLEGATE, Ohio
GUS SAVAGE, Illinois
FOFO I.F. SUNIA, American Samoa
JIM MOODY, Wisconsin
ROBERT A. BORSKI, Pennsylvania
JOE KOLTER, Pennsylvania
TIM VALENTINE, North Carolina
WILLIAM O. LIPINSKI, Illinois
MICHAEL A. ANDREWS, Texas
KENNETH J. GRAY, Illinois
CHESTER G. ATKINS, Massachusetts
JAMES A. TRAFICANT, Jr., Ohio
ROBERT A. ROE, New Jersey
JOHN B. BREAUX, Louisiana
RON de LUGO, Virgin Islands
NORMAN Y. MINETA, California
JAMES J. HOWARD, New Jersey (ex officio)

BUD SHUSTER, Pennsylvania
JOHN PAUL HAMMERSCHMIDT, Arkansas
NEWT GINGRICH, Georgia
WILLIAM F. CLINGER, Jr., Pennsylvania
GUY MOLINARI, New York
BOB McEWEN, Ohio
THOMAS E. PETRI, Wisconsin
RON PACKARD, California
TOM DeLAY, Texas
SONNY CALLAHAN, Alabama
JIM LIGHTFOOT, Iowa
GENE SNYDER, Kentucky (ex officio)

CONTENTS

Page

H.R. 2092—To amend the Natural Gas Pipeline Safety Act of 1968, and the Hazardous Liquid Pipeline Safety Act of 1979 v

TESTIMONY

Bailey, Robert W., manager, property taxes, Tenneco, Inc., Tennessee Gas Pipeline Co 107

Cook, Marlow W., partner, Bishop, Liberman, Cook, Purcell & Reynolds 107

Douglass, M. Cynthia, Administrator, Research and Special Programs Administration, U.S. Department of Transportation, accompanied by Lee Santman, Director, Materials Transportation Bureau 18

Johanson, Dale, vice chair, Staff Subcommittee on Pipeline Safety, National Association of Regulatory Utility Commissioners, accompanied by Paul Rodgers, general counsel; and Charles D. Gray, assistant general counsel 69

McBride, James W., partner, Laughlin, Halle, Gibson & McBride 107

SUBMISSIONS FOR THE RECORD

Bailey, Robert W., manager, property taxes, Tenneco, Inc., Tennessee Gas Pipeline Co., statement 84

Cook, Marlow W., partner, Bishop, Liberman, Cook, Purcell and Reynolds, statement 77

Douglass, M. Cynthia, Administrator, Research and Special Programs Administration, U.S. Department of Transportation:

- Statement 3
- Report adopted February 28, 1985, by the Joint Committee on Technical Pipeline Standards and Technical Hazardous Liquid Pipeline Safety Standards 21
- Fiscal year 1987 authorization levels—estimated cost for a hazardous liquid pipeline grant program 29
- Status Report: Gas explosion, Beaumont, KY 35
- Liquefied natural gas spill test dates 37
- Memorandum of understanding between the Department of Transportation and the Federal Energy Regulatory Commission regarding liquefied natural gas facilities 38
- Estimating areas where corrosion could create serious problems 50
- Percentage of gas pipeline accidents due to outside forces 51

Johanson, Dale, vice chair, Staff Subcommittee on Pipeline Safety, National Association of Regulatory Utility Commissioners, statement 53

McBride, James W., partner, Laughlin, Halle, Gibson & McBride, statement 92

ADDITIONS TO THE RECORD

American Gas Association, statement 121

McGrath, Jerome J., president, Interstate Natural Gas Associaton of America, statement 132

Williams, Kenneth A., Director, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, statement presented to Senate Committee on Commerce, Science and Transportation, September 28, 1984 143

99TH CONGRESS
1ST SESSION

H. R. 2092

To amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1986 and 1987, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 1985

Mr. HOWARD (for himself, Mr. SNYDER, Mr. ANDERSON, Mr. SHUSTER, Mr. SHARP, and Mr. DANNEMEYER) (by request) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Public Works and Transportation

---

A BILL

To amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1986 and 1987, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 17(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684(a)) is amended by—

(1) striking out "and" at the end of paragraph (2);

(2) striking out the period at the end of paragraph (3) and inserting in lieu thereof ";"; and

(3) adding at the end thereof the following new paragraphs:

"(4) $3,350,000 for the fiscal year ending September 30, 1986; and

"(5) such sums as may be necessary for the fiscal year ending September 30, 1987.".

(b) Section 17 of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684) is amended by—

(1) amending subsection (b) to read as follows:

"(b) For purposes of carrying out the Federal grants-in-aid provisions of both section 5(d) of this Act and section 205(d) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(d)) there are authorized to be appropriated the combined amount of—

"(1) $4,500,000 for the fiscal year ending September 30, 1986; and

"(2) such sums as may be necessary for the fiscal year ending September 30, 1987."; and

(2) adding at the end thereof the following new subsection:

"(c) In allocating the funds authorized to be appropriated by subsection (b) of this section, the Secretary shall take into account the extent to which each qualifying State agency exercises jurisdiction over intrastate pipeline facilities within that State.".

SEC. 2. (a) Section 214(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2013(a)) is amended by—

(1) striking out "and" at the end of paragraph (2);

(2) striking out the period at the end of paragraph (3) and inserting in lieu thereof ";"; and

(3) adding at the end thereof the following new paragraphs:

"(4) $850,000 for the fiscal year ending September 30, 1986; and

"(5) such sums as may be necessary for the fiscal year ending September 30, 1987.".

(b) Section 214(b) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2013(b)) is repealed.

SEC. 3. (a) Section 5(a) of the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1674(a)) is amended by—

(1) striking out "$5,000"; and

(2) inserting in lieu thereof "the amount that the Secretary establishes by regulation".

(b) Section 205(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2004(a)) is amended by—

(1) striking out "$5,000"; and

(2) inserting in lieu thereof "the amount that the Secretary establishes by regulation".

○

TO AUTHORIZE FUNDS IN FISCAL YEARS 1986 AND 1987 FOR CARRYING OUT THE NATURAL GAS PIPELINE SAFETY ACT OF 1968 AND THE HAZARDOUS LIQUIDS PIPELINE SAFETY ACT OF 1979

TUESDAY, APRIL 30, 1985

House of Representatives,
Subcommittee on Surface Transportation,
Committee on Public Works and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2253, Rayburn House Office Building, Hon. Glenn Anderson (chairman of the subcommittee) presiding.

Mr. Anderson. The meeting of the subcommittee will come to order.

Today, the Subcommittee on Surface Transportation is meeting for the purpose of receiving testimony on H.R. 2092, a bill introduced by request, to authorize funds in fiscal years 1986 and 1987 for carrying out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquids Pipeline Safety Act of 1979.

Although the Federal Government has responsibility for regulating safety in the pipeline industry with regard to intrastate natural gas pipelines, that responsibility is passed along to those States. All but three States participate in our Federal grant program. A similar State program for hazardous liquids was created about 6 years ago. To date, this program has not been funded. As any who attended our hearings on this matter last year can attest to, this lack of funding has been a matter of some concern to the subcommittee.

The bill before us today contains language that would merge the two State grant programs into one unified program. Until this year, both the House and the Senate have steadfastly adhered to the need for a separate program approach. The Hazardous Liquids Pipeline Program is now proposed to be merged into the State grant program for natural gas pipelines. The administration's rationale for this approach is:

> First, it gives flexibility to the States to direct their safety dollars to those pipelines which have the biggest safety problem, whether natural gas or hazardous liquid. Second, it encourages those States with hazardous liquid pipelines to adopt the Federal intrastate standards.

Now the logic leading to these conclusions needs to be scrutinized with a view to determining whether or not the proposed merging of the two programs is in the best interests of the safety of the citizens of our country. I am certain the subcommittee wants to be judicious with respect to the use of tax dollars so we are willing to listen to proposals that will save tax dollars without sacrificing public safety. To the extent that the administration program may be found to meet this test, it will be given every consideration.

In addition, some of the witnesses will address taxing practices of the States as they apply to natural gas pipeline property and how those taxes affect consumer prices.

Our first witness today is Cynthia Douglass, Administrator of the Research and Special Programs Administration, U.S. Department of Transportation.

Ms. Douglass, the full text of your prepared statement will appear in the record at this point.

[Statement referred to follows:]

STATEMENT OF M. CYNTHIA DOUGLASS, ADMINISTRATOR
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
BEFORE THE
SURFACE TRANSPORTATION SUBCOMMITTEE
OF THE
HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

APRIL 30, 1985

Good morning, I am delighted to be here today as Administrator of the Research and Special Programs Administration (RSPA) to discuss authorization of our pipeline safety programs for fiscal year 1986 and 1987.

My statement will highlight the recent progress we have made toward fulfilling our mandates under the two statutes that guide RSPA's programs - the Natural Gas Pipeline Safety Act of 1968 (NGPSA) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA).

We are seeking the following authorizations for the pipeline safety program for fiscal year 1986:

- o Under the NGPSA, a total of $7.85 million - $3.35 million for the associated expenses of the Federal natural gas pipeline safety program conducted by the Materials Transportation Bureau and $4.5 million for grants-in-aid to help support state-administered gas pipeline safety programs; and
- o Under the HLPSA, $850,000 to carry out the hazardous liquid pipeline safety program.

Our budget request anticipates a pipeline safety program based on the following activities:

1. Research and development of regulations to prevent pipeline failures;

2. Training of Federal and State inspectors to inspect and enforce the regulations;
3. Inspection of pipelines;
4. Enforcement of the regulations; and
5. Dissemination of data collection information and educational materials to those involved in pipeline transportation.

This budget will allow us to continue programs that promote safety and efficiency in pipeline transportation.

Natural Gas Pipeline Safety Act of 1968

The NGPSA provides for Federal safety regulation of facilities used in the transportation of natural and other gases by pipeline. The NGPSA provides a framework for assuring gas pipeline safety consisting of two parts:

(1) exclusive Federal authority to regulate interstate pipelines and facilities,

(2) Federal responsibility for regulation of intrastate pipelines with provisions for State assumption of all or part of the intrastate responsibility.

The Department's responsibility for safety regulation of natural gas pipelines involves more than 2,300 operators of a gas pipeline network of over 1.5 million miles.

The cornerstone of this Federal gas pipeline safety program is the partnership program we have established with the States. The NGPSA provides for grants to States that undertake to establish regulatory and enforcement authority for intrastate natural gas pipelines. Such States may be reimbursed for up to 50 percent of expenses incurred in running their programs. Forty-nine jurisdictions have developed safety programs by adopting the Federal pipeline safety regulations and enforcing them with substantially the same sanctions as those employed by the

Department. Twenty-six of the jurisdictions are receiving a full 50% of their estimated program costs. Thirty-six states are receiving at least 40% of their estimated program costs.

The efforts of State programs have encouraged natural gas pipeline operators to devote increased resources and improved state-of-the-art technology to the design, construction, operation, and maintenance of their systems and to develop more effective training and public awareness programs. Operator improvements have mitigated the deterioration of thousands of miles of pipelines and have resulted in the replacement of substantial portions of obsolete and degraded systems.

The most tangible indication of the success of the gas pipeline safety program is our safety record. The numbers fluctuate but the overall trend of fatalities and injuries has been downward. Last year, there were 35 fatalities and 239 injuries caused by 1,002 natural gas pipeline accidents. I believe it is important to note that of the 35 fatalities reported, most were attributable to outside forces (third party damage) or maintenance- repair work which was done by persons over whom we have no jurisdiction, and which, therefore, did not involve violations of our regulations.

Hazardous Liquid Pipeline Safety Act of 1979

The HLPSA authorizes the Department of Transportation to regulate hazardous liquid pipelines (e.g., crude oil and gasoline) for safety purposes. This Act mirrors the NGPSA.

The Act includes provisions that allow for: Federal safety standards for hazardous liquid pipelines; a Federal/State partnership for regulating intrastate pipelines, with Federal financial assistance to State agencies adopting and enforcing the Federal standards for intrastate pipelines; and establishment of civil enforcement remedies for violations of the Federal standards. It is important to note that the Federal interstate standards for hazardous liquid lines have been in place since 1981 and that the Federal regulations for intrastate lines are now complete. The Final Rule was published in the Federal Register on April 23, 1985

Implementation of this intrastate standard was originally delayed to allow States the necessary time to determine the extent of intrastate involvement, to enact enabling legislation, and to develop the other regulatory tools required to administer statewide programs.

Seventeen States have now established jurisdiction including California and Texas, where a large number of intrastate pipelines are located. Six others are seeking jurisdiction from their State Legislatures for intrastate hazardous liquid pipelines. Most of the States we consider to be essential to a successful Federal/State partnership program for hazardous liquid pipelines - that is, those with a significant amount of liquid pipelines - have established or are seeking jurisdiction.

Finally, with respect to hazardous liquid pipelines, I am pleased to report there were no fatalities and only 19 injuries caused by 203 hazardous liquid pipelin accidents. I am committed to ensuring that this excellent safety record continues as we carry out the Congressional mandates for pipeline safety.

Authorization request for Grant in Aid Program ($4.5 million for FY 1986)

Both Acts set up a Federal grant-in-aid program. The purpose of the grants-in-aid is to encourage the States to adopt, inspect and enforce the Federal regulations for intrastate pipelines.

In FY 1985 $4.5 million was appropriated for grants-in-aid to the States for their natural gas pipeline safety programs. No money was appropriated for the hazardous liquid program.

This year we are requesting that Congress merge the two grant programs and authorize $4.5 million for the merged program. While this amount does not reflect additional dollars for the hazardous liquid program it does have two distinct advantages. First, it gives flexibility to the States to direct their safety dollars to those pipelines which have the biggest safety problem, whether natural gas or hazardous liquid. Second, it encourages those States with hazardous liquid pipelines to adopt the Federal intrastate standards. We believe a merger of the programs makes safety sense. It will also best serve our administrative needs by providing an efficient unified approach to the operation of substantially identical programs.

he

In keeping with the Administration's present deficit reduction efforts, we would oppose new funding for the hazardous liquids grant program. Additional funding for a separate grant program cannot be justified on safety grounds or on uniformity grounds at this time. Further, the States are already seeking alternative sources of funding for such programs. For example, California has instituted user fees.

Another change in the grant program which we implemented in FY 1985 and expect to refine in FY 1986 affects the way we allocate the Federal dollars to the States. We are proceeding slowly until we perfect our new allocation formula but we do believe it is time for a change in this direction.

When the Natural Gas Pipeline Safety Act was originally passed in 1968, one of the objectives was to further Federal uniformity in pipeline safety regulations and enforcement. The grant program was set up to encourage the States to adopt and enforce the Federal regulations. We allocated the grant money to the States based simply on whether or not they had adopted the Federal rules for intrastate natural gas pipeline safety.

Now that 49 jurisdictions have essentially adopted the Federal regulations, it is desirable to set some basic criteria to encourage States to improve the safety and efficiency of their programs. In FY 1985, RSPA distributed the $4.5 million appropriated as follows: $3.5 million was distributed as it has been in the past; the remaining $1 million was distributed according to certain criteria designed to seek improvements in State programs. The criteria used by RSPA were participation status, jurisdiction, inspector qualifications, recommended number of inspectors and recommended number of inspection person-days.

Use of this formula for allocation of grant money has the advantage of encouraging States to upgrade their programs. Some would like to see us go further and see to it that Federal dollars are directed at those pipelines likely to present the biggest safety problem. However, our allocation formula must not be so cumbersome - with so many strings attached - that it causes States to drop out of the program.

Authorization request for Federal Pipeline Safety Program ($3.35 million for Natural gas program and $850,000 for Hazardous liquid program)

This funding level represents a freeze in FY 1985 spending levels with two exceptions:

1. a 5% pay cut ($125,000)
2. a 10% across the board administrative cost cut ($20,000)

We do feel it will enable RSPA to continue our pipeline safety programs at an adequate level.

The Federal pipeline safety program budget will allow the Department to do research and develop regulations for pipeline safety. We do not anticipate promulgation of any significant rules in FY 1986. We will be conducting Liquefied Natural Gas spill tests to better understand vapor dispersion distances. We will also initiate a study to compare the requirements of Federal safety standards governing highly volatile liquid (HVL) pipelines to Federal safety standards for gas pipelines. We will continue assessing the effectiveness of damage prevention programs to alleviate the risks of external force damage and in a similar manner, we will continue assessing changes in gas pipeline reporting requirements.
The Federal pipeline safety program provides funding for 17 Federal Inspectors who inspect interstate pipelines and work directly with the State inspectors on intrastate pipelines; it also funds the program personnel responsible for overseeing the State programs. Further, the budget allows for funding of meetings of the two pipeline safety advisory committees.

Our budget request anticipates continued funding for training programs for Federal and state pipeline inspectors at RSPA's Transportation Safety Institute. Because pipeline safety training at State selected sites has proven to be so popular with States, we also intend to continue this program.

In addition to training programs, the RSPA offers a variety of training aids, newsletters and booklets for use in pipeline safety compliance and enforcement. For example, the "Guidance Manual for Operators of Small Gas Systems" and its companion training package, is now in its second printing. Over 20,000 copies have been distributed.

Further RSPA has undertaken a number of studies at the request of Congressional representatives or Committees. They are summarized as follows:

(1) Methanol Pipeline Study: Study of issues relating to the transportation of methanol through interstate liquid pipelines. The study examines the economics and engineering of such transportation; and any associated environmental, health and safety problems.

The report on the study has been completed and we expect to forward it to Congress soon.

(2) Pipeline Safety Testing/Inspection Methods Study: Study of the feasibility of, and costs connected with, requiring various methods of testing and inspecting hazardous liquid pipeline facilities, including new technologies available for monitoring from the outside or the inside the condition of such facilities.

Contacts have been made with other Federal agencies, trade associations, pipeline companies, R&D organizations and equipment suppliers to identify inspection/testing methods which are available. Literature searches and an industry survey have been completed. Our initial findings were presented to the Hazardous Liquid Committee on February 27, 1985. A final report is due to Congress October 11, 1985.

(3) Study to identify and inspect potentially hazardous interstate pipeline transmission facilities constructed before 1940: One third of completed questionnaires have been received and the balance are expected by mid-April. Inspection of facilities is scheduled for May and June; with a final report due by July.

(4) Study of the alignment of pipeline safety regulatory responsibilities among various levels of government: The study will examine possible additional pipeline activities to be included in a regulatory program, alternative alignments of governmental responsibilities, legislation and funding of impacts of the alternatives.

A report outline has been completed and circulated for comment. A draft report is scheduled for July.

(5) Study of Hazardous Liquid Storage Facilities: This study will review the safety performance of the facilities incidental to pipeline transportation. The study will examine the potential risks of these facilities not currently regulated under Part 195 to determine if they pose a sufficient threat to warrant regulation.

A storage study questionnaire is being prepared for mailing to a sample of operators. This study is scheduled for completion in July.

(6) Study to evaluate benefits and costs of establishing a mandatory quality assurance program for interstate pipeline operators: Interstate Natural Gas Association of America (INGAA) members are in the process of commenting on quality assurance audits. The final report is scheduled for July.

DOT/FERC MOU

This month, the Department of Transportation expects to finalize a Memorandum of Understanding (MOU) with the Federal Energy Regulatory Commission (FERC). The MOU clarifies the respective safety regulatory responsibilities of the Department and the Commission regarding liquified natural gas (LNG) facilities by establishing procedures for each agency in the review of safety requirements for pipeline companies subject to the jurisdiction of both agencies. A copy of the MOU will be submitted for the record as soon as it is signed by all parties.

United States General Accounting Office (GAO) Report

When I was appointed Administrator of the Research and Special Programs Administration by Secretary Dole almost a year ago, Secretary Dole asked me to review the pipeline safety program to determine what improvements could be made in the program and to make recommendations to her if I felt changes were necessary. In response to her request, I began a complete review of our program. A few months later, the GAO issued their report which they characterized as recommending "minor tweaks" to the system.

While I consider program review and subsequent improvements to be an ongoing process, I am able to report on a number of improvements and assessments already being made.

(1) Rulemaking and Federal Jurisdiction

Generally, there has been no criticism of our pipeline safety rulemaking. GAO did recommend that we study the outlay of Federal responsibility under the Acts and determine if new lines of responsibility should be drawn or if any other legislation affecting the Federal/State partnership should be proposed. We are studying this and expect to complete our analysis in FY 1985.

(2) Federal Inspectors

GAO made a number of recommendations aimed at improving Federal inspection coverage of pipeline operators. GAO recommended:

- o an evaluation of quality assurance programs which we have agreed to;
- o the use by Federal inspectors of "common inspection units" which we are now doing; and
- o improved data collection related to inspections which our inspectors are now including in their monthly reports to RSPA.

(3) Federal Oversight of State Programs

The Department is continuing the effort initiated soon after the establishment of the Federal/State partnership to establish performance-oriented evaluation measures for use in monitoring State gas programs. The GAO audit took place during a time when refinements were being made in the documentation used in the monitoring process. Those changes, which amount to more performance-oriented measures, have been completed and are in use today. The following refinements have been made.

- The form for use by Departmental personnel in evaluating State performance has been redesigned in coordination with the National Association of State Pipeline Safety Representatives and is being used beginning in 1985 for monitoring the performance of the States in 1984.
- A written monitoring policy has been established. Guidelines that cover the full range of Federal expectations for the performance of the States have been included and are in use.
- The criteria for achieving the minimum acceptable level of State inspection activity have been revised; e.g., onsite training of operators and accident investigation are now included in the criteria.
- Guidelines to the States on recording, data collection, inspection days, operators inspected, noncompliances found, and enforcement actions have been revised to ensure that Departmental personnel can accurately and fairly assess the State's performance.
- Beginning with the monitoring visits conducted in 1985, the Departmental personnel are spending more time reviewing the records of State program activity prepared by States in an attempt to achieve accuracy, completeness and timeliness.
- In the 1985 monitoring process, the Department will focus on the adequacy of training received by State personnel, the use of adequate enforcement procedures, manpower requirements, level of effort in

inspection, data collection and record keeping, the extent of assumption of responsibility for intrastate pipeline systems, and program uniformity. These items will be reviewed annually to determine the need for change.

- State inspector qualifications have been redefined in terms of the depth of knowledge and skills necessary to perform as an inspector. The qualifications have been synthesized in a generic position description for use by State agencies.
- Beginning with 1985, in order to ensure adequate levels of enforcement, the Department is requiring that all new inspectors attend all pipeline safety courses offered at the Transportation Safety Institute within three years of the start of employment as an inspector. Exceptions are granted for good cause.

(4) Data Collection and Analysis

As part of our ongoing program review, the Department will be undertaking a review of our data collection system this summer. Before beginning this review, we will work with the NTSB to assure that we agree on the exact nature of the areas to be addressed as well as an effective approach to overall system improvement.

Pipeline Safety Advisory Committees

Both the NGPSA and HLPSA established pipeline safety advisory committees comprised of industry, government and public members. These Committees provide the Department with balanced and knowledgeable advice on our pipeline safety regulations.

Last year, there was considerable Congressional concern that the Advisory Committees were underutilized and lacked sufficient direction. In accordance with Congressional interest in using the Committees more effectively, and so that I could better evaluate the Department's pipeline safety program, I brought both

Advisory Committees into Washington in October 1984 and February 1985. Both Committees met individually on upcoming pipeline regulations and then met jointly to assist me in an overall review of our pipeline safety program. I believe these meetings set an example of how important this type of advice can be to a Government program. For this reason and because the Administration's budget request for FY 1986 provides $40,000 for these Committees, I believe it important to describe the activities of the Committees more completely.

The members of these Committees are widely respected pipeline safety experts from industry, government, and the public sector. They have given a great deal of their time to this pipeline safety program. The Federal Government pays their travel costs and their hotel and food bills up to $75/day. They are expected to meet several times a year. Their advice allows us to have a far more effective pipeline safety program. The benefits are worth far more then the relatively few dollars we spend bringing these people together.

The Gas Committee met on October 30, 1984 and, more recently, on February 28, 1985. At the October meeting the Committee reviewed and approved a RSPA amendment concerning pipe bends and discussed our regulatory projects concerning monitoring external corrosion, class location, welder qualifications and damage prevention. At the February meeting, they reviewed and approved a proposed safety amendment regarding nondestructive testing of welds.

The Hazardous Liquid (oil) Committee met on November 1, 1984, and again on February 27, 1985. At the November meeting, the Committee reviewed and approved amendments concerning nondestructive testing of welds and discussed our regulatory projects concerning record keeping and accident reporting. The Committee discussed and deferred for later action the issue of rural gathering/intrastate lines noting that more cost/benefit information was needed before the NPRM could be evaluated. At the February meeting the Committee continued the discussion of rural gathering lines and in light of the new comments on cost/benefit information, the Department will revise the proposed rulemaking. The Committee also received reports on the status of Congressionally mandated studies on testing and inspecting hazardous liquid pipelines and the transportation of methanol through the interstate hazardous liquid pipeline system.

Both in October and in February the two Committees met jointly to be briefed on our pipeline safety program. The Committees heard both from our pipeline safety office and from the GAO. At the February meeting the Committe discussed and approved a report to the Secretary making observations and recommendations regarding (1) the GAO report and (2) our pipeline safety progra

With respect to the GAO report the Committees concluded:

- Operating performance of the industry is generally good and the Department's programs appear to be meeting the broad objectives of th NGPSA of 1968 and the HLPSA of 1979.
- Future decisions on allocation of resources to or within the Department should be based on analysis of accidents, results of inspections and othe relevant experience.
- Programs should be designed to prevent accidents.
- The Department should make better use of existing data and identify areas where insufficient data is available and undertake to generate th data.
- The Department should allocate its inspection/enforcement resources based on performance-related statistics. The Committee noted that additional inspections will not address the single largest cause of pipeli accidents which is third party damage. The Department should work

BEST AVAILABLE COPY

with the States to address this problem.

With respect to pipeline safety issues confronting the Department, the Committees concluded:

- DOT should support uniform standards for pipeline safety.
- Adequate standards exist for pipeline safety based on the data available. The development of new standards or extension of existing standards to gathering lines, master meters or storage facilities should be based on a demonstrated need.
- States should be responsible for intrastate lines, municipals, master meters, and LP Gas operators using Federal standards. Federal inspectors should retain responsibility for interstate systems.
- The Department should continue pipeline inspector training free-of-charge to the States.
- The Department should fund approved State programs at 50%. Approval of a State program and funding should be contingent on satisfactory performance by the State program.

HER

- Company quality assurance programs should remain voluntary. The Department should recognize effective quality assurance programs as it allocates its inspection resources.
- Assessment of the effectiveness of State programs should continue and linkage of funding to effectiveness would add incentive for these programs. Inspection criteria and guidelines should be developed.
- Training can be improved by utilizing video tape and slide tape programs.
- The actions proposed by the Department in its response to GAO are appropriate.

Conclusion

The Federal pipeline safety program is achieving the purposes of the NGPSA and the HLPSA. The Administration's budget request for FY 1986 will allow us to continue the progress made in FY 1985. That concludes my statement and I will be happy to answer questions for the record.

Mr. ANDERSON. Please proceed.

TESTIMONY OF M. CYNTHIA DOUGLASS, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY LEE SANTMAN, DIRECTOR, MATERIALS TRANSPORTATION BUREAU

Ms. DOUGLASS. Chairman Anderson, Congressman DeLay, I would like to introduce Lee Santman. Lee is the Director of the Materials Transportation Bureau and has responsibility for the Pipeline Safety Program as well as the Hazardous Materials Transportation Program.

I am very pleased to be here today to present the Department of Transportation's authorization request for the pipeline safety programs for fiscal years 1986 and 1987. I have submitted my full statement for the record and will take about five minutes to highlight the budgetary request.

The Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 authorize the Department's Pipeline Safety Program. Under those acts, we regulate, inspect, and enforce pipeline safety for natural gas pipelines and hazardous liquids such as gasoline and fuel oil pipelines. Under both acts, the States may assume responsibility for regulating, inspecting, and enforcing intrastate pipeline safety so long as they adopt the Federal standards as their own. We encourage them to do so in large part through the State grant-in-aid program.

We are seeking the following authorizations to carry out our pipeline safety program in fiscal year 1986: Under the Natural Gas Pipeline Safety Act, we are seeking a total of $7.85 million. This is $3.35 million for the associated expenses of the Federal Natural Gas Pipeline Safety Program and $4.5 million for the grants-in-aid to help support State-administered gas pipeline safety programs. Under the Hazardous Liquid Pipeline Safety Act, we are requesting $850,000 to carry out the Hazardous Liquid Safety Program.

The budgetary request generally represents a freeze in fiscal year 1985 spending programs, with the following significant exceptions:

First, we do anticipate a 5-percent pay cut which would equal about $125,000; second, there is a 10-percent across-the-board administrative cost cut of equaling $20,000. This budgetary request anticipates a pipeline safety program which would be based on the following activities: research and development of regulations to prevent pipeline failure; training of Federal and State inspectors to inspect and enforce the regulations; inspection of pipelines; enforcement of the regulations; and dissemination of data collection information and educational materials to those involved in pipeline transportation.

We are also seeking a merger of the two pipeline grant programs and requesting $4.5 million for the merged program. This amount does not reflect additional dollars for the hazardous liquid program, but we feel that it does have two distinct advantages.

First, it gives flexibility to the States to direct their safety dollars to those pipelines which have the greatest safety problems, whether they are natural gas pipelines or hazardous liquid pipelines.

Second, it encourages those States with hazardous liquid pipelines to adopt the Federal intrastate standards.

This budgetary request will allow us to continue programs that promote safety and efficiency in pipeline transportation.

The most tangible indication of the success of our pipeline safety program is our overall safety record. The numbers have fluctuated, but the overall trend of the fatalities and injuries has been downward. Last year there were 35 fatalities and 239 injuries caused by natural gas pipeline accidents. I believe it is important to note that of the 35 fatalities reported, most were attributable to outside forces, third party damage, or maintenance repair work which was done by persons over whom we have no jurisdiction and which, therefore, did not involve violations of our regulations.

With respect to hazardous liquid pipelines, I am pleased to report there were no fatalities and only 19 injuries caused by 203 hazardous liquid pipeline accidents.

I am committed to assuring that this excellent safety record continues as we carry out the congressional mandates for pipeline safety.

Mr. Chairman, this past year has been a year of extensive review and change for our pipeline safety program. I would like to highlight some of the changes for you.

First, with respect to the Natural Gas Grant Program, we are in the process of changing the way we allocate the Federal dollars to the States. We are proceeding slowly until we perfect our new allocation formula, but we do believe it is time for a change in this direction. When the Natural Gas Pipeline Safety Act was originally passed in 1968, one of the objectives was to further Federal uniformity in pipeline safety regulations and enforcement. The grant program was set up to encourage the States to adopt and enforce the Federal regulations. We allocated the grant money to the States based simply on whether or not they had adopted the Federal rules for interstate natural gas pipeline safety. Now that 49 jurisdictions have essentially adopted the Federal regulations, it is desirable to set some basic criteria to encourage States to improve the safety and efficiency—the management of their programs.

The second change I want to highlight was when I was appointed Administrator by Secretary Dole a little over a year ago, Secretary Dole asked me to review our pipeline safety program and make recommendations to her if I felt improvements needed to be made. In response to her request, I began a complete review of our program. A few months later, the GAO issued their report which they characterized as recommending minor tweaks to our system. While I consider program review and subsequent improvements to be an ongoing process, I am able to report that a number of improvements and assessments are already being made. Many of those are described in our response to the GAO, which I will submit for the record.

Third, both the Natural Gas Pipeline Safety Act and the Hazardous Liquid Pipeline Safety Act established pipeline safety advisory committees comprised of industry, public, and Government membership. These committees provide the Department with balanced and knowledgeable advice on our pipeline safety recommendations.

Last year, there was considerable congressional concern that our advisory committees were underutilized and lacked sufficient direction. In accordance with congressional interests in using the committees more effectively and in order to better evaluate the Department's pipeline safety program, I brought both advisory committees into Washington in October 1984 and February of 1985. In fiscal year 1985, both committees met individually to discuss upcoming pipeline regulations and then met jointly to assist me in an overall review of our pipeline safety programs. I believe these meetings set an example of how important this type of advice can be to a Government program.

For instance, the joint meetings of the advisory committees resulted in a written report to the Secretary making observations and recommendations regarding both the GAO report and our pipeline safety program.

I will submit that full report to the committee.

[Report referred to follows:]

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION
ALBANY

CARMEL CARRINGTON MARR
COMMISSIONER

400 BROOME STREET
NEW YORK, N.Y. 10013

March 5, 1985

Ms. Cynthia Douglass
Administrator
U. S. Department of
Transportation
Research and Special Programs
Administration
400 Seventh Street, S.W.
Washington, DC 20590

Dear Cindy:

I am transmitting, herewith, the report adopted on February 28, 1985 by the Joint Committee on Technical Pipeline Safety Standards and Technical Hazardous Liquid Pipeline Safety Standards, which reviews the Department of Transportation Pipeline Safety program.

This report was adopted unanimously. It contains the Joint Committee's assessment of the pipeline safety program, as well as recommendations, some of which propose changes or additions to the existing program.

I would like to request that your office distribute copies of the report and this letter to all of the members of the Joint Committee. Your assistance in this regard will be deeply appreciated.

Sincerely,

Carmel

CARMEL CARRINGTON MARR
Commissioner

CCM:mgh
Encl.

Response to GAO Issues

I. OPERATING PERFORMANCE OF INDUSTRY IS GENERALLY GOOD AND THE DEPARTMENT'S PROGRAMS APPEAR TO BE MEETING THE BROAD OBJECTIVES OF THE NGPSA OF 1968 AND THE HLPSA OF 1979

- The GAO report fails to recognize that although there are pipeline safety issues which require detailed consideration by all involved parties, that pipeline transportation is a proven, safe mode of transportation. Credit goes to the fact that there is a Pipeline Safety Program and that this works well through the joint program that exists with the states and the Federal Government and the cooperation of operators. (See GAO report Appendix I)
- Future decisions on allocation of resources to or within the Department should be based on a specific analysis of actual accident, inspection, and other relevant experience, as well as on a general analysis of the enforcement/inspection program. Programs should be designed to prevent accidents.
- The starting point for any rational safety program is a good data base. In this regard the Department should:
  a) make better use of existing data (i.e., cross sectional analysis of industry by class of operator (interstate, intrastate, local distribution) and by operator.

b) identify any areas where insufficient performance data are available to make informed decisions and undertake to generate that data (e.g. master meter operators). The Department should consult with the Region Chiefs, Officers of NAPSR and NARUC and the Technical Pipeline Safety Committees in order to develop the information which should be in the data base. The information in the data base should be what regulators need.

o Any inspection/enforcement program should continue to be based on performance-related inspections and its stated objectives should reflect that practice. For example, the Department should not devote 80% of its resources to operators responsible for 20% of the accidents. The Department should seek to balance its resource allocation to the performance related statistics.

o It should be noted that additional inspection will not address the single largest cause of pipeline accidents, which is third party damage. The Department should undertake joint efforts with the states and operators to address this problem. In particular, the Department should encourage legislation in the states which promotes enforcement activities with regard to excavators.

Response to DOT Issues[1]

II. Issue:

What should be the appropriate Federal and State roles in:

- Standard setting?
- Importance of uniformity for safety and flow of commerce?

Answer:

Uniform standards do facilitate safety and the flow of commerce. The DOT should take a proactive role in encouraging the development of consistent and uniform standards in those jurisdictions where it is not primarily or solely responsible for establishing standards. DOT should offer its standards as model standards.

- Interstate transmission? Distribution? Rural gathering? Master meters? Storage facilities, etc.?

Answer:

Adequate standards appear to exist for interstate transmission and distribution systems. Although the existing standards apply to master meter operators it is not clear on their face that they do. It is not clear from the data available that additional standards are necessary for rural gathering, master meters, or storage facilities. The studies under preparation by DOT in response to GAO should be completed. The development of new standards or the extension of existing standards to these facilities should be based on a need being demonstrated by the results of these studies.

---

[1] These issues were formulated by DOT and presented to the Working Group of the Joint Committee on January 10, 1985.

- Inspection and enforcement?
- Intrastate for states only? Municipals? Master meters? LP gas operators, etc.?

Answer:

Within the limits of the Federal statutes, inspection of the systems listed should be the responsibility of the state programs using the Federal standard. Federal inspectors would retain primary responsibility for interstate systems.

- Training?
- Who should provide? How should it be delivered?

Answer:

It is the responsibility of the Department to continue to provide the training free-of-charge to the states. The TSI facility at Oklahoma City appears to serve the purpose adequately. This training should be required of all Federal and State Inspectors.

- Funding?
- Federal grants, user fees imposed by states, others?

Answer:

Department should submit budgets to fund approved state programs at the 50% level. A guideline should be established to assure equitable yearly distribution of Federal funding for state programs. Quality assessment of state programs by Region Chiefs should continue and funding should be contingent on satisfactory performance by the state program.

III. Issue:

Based on the above considerations, in the Federal arena:

- Are there pipeline activities/facilities which are now insufficiently regulated and for which regulatory coverage should be extended?
- e.g., storage facilities, rural gathering lines, other liquids?

Answer:

There is no apparent need based on the data available. The studies currently underway will indicate whether a sufficient safety problem exists to warrant further standards. There is feeling that a need exists within the area of master meter operators for both additional data and greater clarity of regulatory responsibility and standards.

- How can the Federal inspection and enforcement effort be enhanced?
- Mandatory quality assurance programs?
- Common inspection units?

Answer:

Company quality assurance programs should remain voluntary. The Department should recognize effective quality assurance programs as it allocates its inspection resources. Performance oriented inspection intervals should be instituted.

With respect to the selection of common inspection units, it makes sense to attempt to conform inspection units to the organizational structure of the operators.

Logic and good sense, not arbitrary rigid boundaries, should determine the establishment of these inspection units.

- How can DOT help to improve the states' programs?
- Closer monitoring?
- Guidance to states on training?

Answer:

The annual assessment of the effectiveness of state programs by the Region Chiefs should be continued. Linkage of funding with effectiveness would add incentive. Inspection criteria and guidelines should be developed and the Federal Government should perform performance reviews.

Mandatory training of State and Federal Inspectors and staff members of O.P.S.R. using existing programs at TSI should be maintained.

- How can DOT improve its training program?
- Curriculum development?
- Delivery?

Answer:

Curriculum appears adequate so long as it maintains state-of-the-art materials. Efforts should be made to incorporate reference standards more quickly into both the training programs and the standards.

Delivery systems can be improved by utilizing video tape and slide tape programs. For example, TSI should develop video tapes which would be provided free-of-charge to operators, regarding safe design and operation of such systems.

Minimum inspector qualifications should be used along with successful TSI course completion.

- Are the GAO recommendations to these specifics appropriate?
- are RSPA responses to the GAO recommendations appropriate and/or are there future opportunities for program improvement?

Answer:

The actions proposed by the MTB in its response to the GAO are appropriate. The Joint Committee further believes the increased use of the TPSSC and THLPSSC committees on a joint and individual basis is beneficial to the Department and to the Federal Pipeline Safety Programs. The Department should provide the results of the proposed actions to the safety committees for their joint or individual review and further recommendations as appropriate.

Insofar as future opportunities for program improvement are concerned, we strongly encourage the adoption of reference standards into the regulations more quickly in order to keep the regulations responsive to state-of-the-art technology. In addition to keeping the regulations current with new technology, a more rapid response to waiver requests should be pursued.

Respectfully submitted,

Carmel Carrington Marr
CARMEL CARRINGTON MARR, Chairperson
Joint Technical Pipeline Safety
Standards Committee/Technical
Hazardous Liquids Pipeline Safety
Standards Committee

Ms. Douglass. In conclusion, I just want to say I believe our Federal Pipeline Safety Program is achieving the purposes of the Natural Gas Pipeline Safety Act and the Hazardous Liquids Pipeline Safety Act. The administration's budgetary request for fiscal year 1986 will allow us to continue the progress made in fiscal year 1985.

That concludes my statement. I will be happy to answer questions for the record.

Mr. Anderson. Thank you, Ms. Douglass, for your presentation. In your letter to Chairman Sharp dated April 15, 1985, you suggest authorization levels for fiscal year 1987. The funding for carrying out the Hazardous Liquids Pipeline Safety Act in fiscal year 1987 is less than that for fiscal year 1986. That is the only program segment that would be reduced in fiscal year 1987. Could you tell us the reason for that proposed reduction?

Ms. Douglass. Lee, can you comment on that? I am sorry. I will have to check on that number. Our intention was to take the number that we had for this year and increase it by 4.2 percent. I will get back to you for the record for sure.

Mr. Anderson. Please do that.

The number is small, but it seems to be going in the wrong direction.

[The following was received from Ms. Douglass:]

FISCAL YEAR 1987 AUTHORIZATION LEVELS

We do not propose any reduction in spending for FY 1987. We made an error in calculating our FY 1987 projection.

We intended to take the FY 1986 number and, using the proper procedures, multiply it by the inflationary factor (4.2%). Unfortunately, the base number used was $827,025, which represents the appropriation request for FY 1986 as shown on page 30 of our FY 1986 budget justification. The correct base number should have been the $850,000 contained in our FY 1986 authorization request.

To calculate the correct estimated authorization level for FY 1987, the personnel compensation and benefits (PC&B) ($451,937) is subtracted from the base number, since it is not subject to inflationary rate. This process leaves ($850,000–$451,937) or $398,063. The inflationary rate of 4.2% is then applied ($398,063 × 1.042%) yielding $414,782. The final step is to add back the non-inflated PC&B. This step yields the accurate estimated authorization level for FY 1987 $866,719 (414,782 + 451,937); of course, this is merely a projection, and has not been either formally submitted to, or approved by the Office of Management and Budget. Again, this represents an increase over FY 1986. RSPA expects to continue the current program level proposed for FY 1986 in FY 1987.

Mr. Anderson. I would like to ask you two questions relative to the hazardous liquid pipeline State grant. First, if the States do not enter into agreements with the Federal Government to regulate the safety aspects of intrastate hazardous liquid pipelines, who will have the responsibility to regulate those pipelines and enforce the regulations?

Ms. Douglass. If the——

Mr. Anderson. The States do not enter into the agreements?

Ms. Douglass. The Federal Government would have the responsibility.

Mr. Chairman, there are 1.5 million miles of natural gas pipelines. Of that, I believe there are 307,000 miles of transmission lines and there are 1.2 million miles of intrastate pipeline.

In the hazardous liquid area, there are 11,000 miles of intrastate pipelines as compared to 1.2 million miles of natural gas pipeline. We would have to pick up about 11,000 miles. Already many of the States have taken on that responsibility.

Mr. ANDERSON. If the Federal Government would have to regulate and to enforce its regulations for intrastate hazardous liquid pipelines, what effect would that have on the Department's resources and budget?

Ms. DOUGLASS. We feel that it will have a very minor impact. First, a number of States have already enacted legislation taking responsibility for many of those 11,000—in fact, I would say, for most of those 11,000 miles. Seventeen States have enacted legislation taking on that responsibility. Another way of putting it is that of the 290 hazardous liquid intrastate operators, 160 are from States that have enacted legislation.

Mr. ANDERSON. Have any States indicated to you that they will not participate in the program, should the Federal Government fail to provide money for that State grant program? If so, would you tell us which States have so indicated they will not? Then I will ask the other side in a minute.

Ms. DOUGLASS. I have a list here of States that are not interested.

Mr. ANDERSON. The ones that will not participate?

Ms. DOUGLASS. Yes; I have a list of those States not interested. However, in some cases, I am not sure that putting money into a grant program specifically for hazardous liquids would get their participation. There are 17 States that have said to us that they are not interested. Do you want those?

Mr. ANDERSON. If the list is not too long.

Ms. DOUGLASS. Michigan, Illinois, Florida, Colorado, Kentucky, Alaska, Indiana, Delaware, Minnesota, Georgia, Massachusetts, South Dakota, Utah, Idaho, Maryland, Virginia, and Nebraska.

Mr. ANDERSON. That is the list of those not participating in the program?

Have any States indicated to you that they will participate in the program even if the Federal Government does not provide money for that State grant program? If so, could you again tell us which States have so indicated?

Ms. DOUGLASS. First, I don't want to leave the impression that any of these States wouldn't accept money if it were available to them. The States that already have legislation, that have taken on the Federal standards, are Texas, California, Wyoming, Pennsylvania, Kansas, New Mexico, Montana, Ohio, North Dakota, Arizona, Arkansas, New York, Iowa, Nevada, Hawaii, West Virginia, and Oregon. There are six more States that are currently seeking legislation: Louisiana, Oklahoma, Missouri, Alabama, Washington, and Wisconsin.

Mr. ANDERSON. Have any States indicated to you their position on the Department of Transportation's proposal to merge the State grant programs for natural gas pipelines and the hazardous liquid pipelines; and if so, could you tell us which States have so indicated?

Ms. DOUGLASS. Have indicated—a desire?

Mr. ANDERSON. They like it, yes.

Ms. DOUGLASS. Lee may be more familiar with that. I have been to a number of regional meetings with State pipeline people and I have talked with a number of people. I have talked with the NARUC Committee on Pipeline Safety, for example. I have also spoken with a number of people in the States, including Tom Dixon, who has been the head of the pipeline safety state group.

My understanding is that they have not taken a position in support or in opposition to it. They are taking a look at it. Their concern is that a lot of those States could have hazardous liquid programs and would like to see more money put into either a merged program or into the hazardous liquid program. As far as merging the programs, I don't believe they have taken a position.

Have you talked with any particular States that have specifically said we think this is great or we think this is horrendous?

Mr. SANTMAN. No.

Mr. ANDERSON. For the record, I forgot to identify your colleague. Lee Santman, Director of Materials Transportation Bureau. I am sorry.

Go ahead, Lee.

Mr. SANTMAN. I have received no comment or heard no comment one way or the other from any individual State.

Mr. ANDERSON. On page 15 of your statement you indicated the two advisory committees concluded the Department should fund approved State programs at 50 percent. Do they mean the State grant programs for natural gas and hazardous liquid pipelines? If so, what reason did they give for reaching that conclusion? Finally, did the two advisory committees reach any conclusion with respect to a merged grant program?

Ms. DOUGLASS. They did not address specifically either the merger or the funding of the Hazardous Liquid Program. However, they did recommend that we fund the grant program at 50 percent of a reasonable program. That is a difficult figure to determine because—and I specifically asked the committee about this—the problem is that in the past when we talked about a 50-percent funding level we talked about 50 percent of the States' request for their State Pipeline Program. What I believe the committee meant—and I have the transcript that you can take a look at—was that we fund 50 percent of what we felt was necessary for a reasonable Pipeline Safety Program in the States. We might evaluate the programs and decide that one State has a gold-plated program and the committee would not want us to fund 50 percent of a gold-plated program. I am not criticizing a State with such a program. I think the world of such a State program. One example of my point is Texas. Texas has a great program. They requested from us $1.5 million. We think that they are doing a terrific job, but we do not feel like we would need to fund 50 percent of their requested amount.

Further, the States actual expenditures are less than their requested amount. For instance, right now in 26 States, we are funding 50 percent. In another 10 States, totalling 36 States, we are funding over 40 percent of their program. When the States' actual expenditures come in, it will turn out that we are funding more than 26 States at 50 percent. Likewise, more will fall into the category of over 40 percent.

So way over half of the States are getting more than 40 percent of the program that they are requesting.

Mr. **Anderson**. In view of the 1985 request from the States for the Gas Program alone, how can the Department of Transportation justify startup of an additional program for hazardous liquids without requesting funding to get that program off the ground?

Ms. **Douglass**. The total number of miles in the intrastate Natural Gas Program for which the States have responsibility, or could have responsibility, is 1.2 million miles.

That is 1.2 million miles for natural gas. Compare that to 11,000 for the entire State oil pipeline. That is one consideration.

Another consideration——

Mr. **Anderson**. So it is much smaller and they can start without problems?

Ms. **Douglass**. They can absorb that fairly easily, we felt. We did try to make some assessment of how many additional inspectors would be needed. First of all, I believe this is a very, very high standard of inspection. However, if we were to inspect every intrastate hazardous liquid pipeline operator once a year—which we do not feel is necessary—if we were to spend 2 full days working with that operator, looking at the paper, looking at the pipelines, we figure that it would require about an additional four inspectors for all of those 17 States.

The six States that are seeking legislation would require a little over one pipeline inspector.

For the States that are not interested, about two pipeline inspectors would be required. That is a total of——

Mr. **Anderson**. How much would it cost to fund the State grant programs for hazardous liquid pipeline in money? Not counting how many people, how about the money? Can you make any estimate of what it would cost to fund a State grant program for hazardous liquid pipelines?

Ms. **Douglass**. I could supply that for the record. I don't believe we have that precise figure here.

[The following was received from Ms. Douglass:]

ESTIMATED COST FOR A HAZARDOUS LIQUID PIPELINE GRANT PROGRAM

RSPA has recommended a merger of the gas and liquid pipeline grant programs. There are currently 23 states that qualify or have indicated an interest in qualifying for liquid funds in 1986. If these states decide to have a hazardous liquid program, RSPA estimates that they will expend $450,000 in 1986. Of this amount, up to 50% or $225,000 would be eligible for reimbursement from Federal grant funds. Thus, the estimated cost for a hazardous liquid pipeline grant program is $225,000 (Federal grant funds). The estimate was obtained from the number of inspectors needed in the 23 states, assuming that each operator is inspected once per year, and that each inspector spends from 2 to 3 days per inspection and 75 days in the field on inspections. The Administration believes, however, that a total of $4.5 million is adequate to fund the combined grant program.

Ms. **Douglass**. Would you like to know why the administration did not choose to fund that program? I would be glad to comment on that.

Mr. **Anderson**. Why don't you?

Ms. **Douglass**. OK. First of all, we felt that the safety record of the industry was excellent. There were zero deaths and 19 injuries. Second of all, we have not heard from the States or from the industry on there being a uniformity problem. In addition to that, there were only 11,000 additional miles for which States would be taking responsibility. We did not feel that there was a national pipeline safety or uniformity problem. Those are two objectives of the overall program—the pipeline safety acts or safety in uniformity. We did not feel that in this time of trying to reduce Government spending that we could justify starting a new national grant program based on the excellent safety record and the uniformity and the——

Mr. ANDERSON. On your safety record, on page 4 of your statement, you say, "I am pleased to report that there were no fatalities and only 19 injuries caused by 203 hazardous liquid pipeline accidents."

Later today, the witness for the National Association of Regulatory Utility Commissions will testify that 19 injuries that you had is the second highest number of injuries reported in the period from 1974 to 1984. "Only 1981 was higher with 32 injuries." How does this statistic of 19 injuries compare to the years 1982 and 1983 which are the only two other years that the new Federal regulations have been in effect? In other words, we are very proud of the act, except there have been more accidents than we have ever had before.

Ms. DOUGLASS. That is a true statement last year's injury report for hazardous liquid pipelines was the second highest. However, of those 19 injuries, 18 of those injuries were caused by outside force damage—equipment digging had ruptured pipelines. We have a one-call system we are trying to promote in the States to encourage construction workers to call in. The industry has set up programs in the States so that a construction worker can call in and find out where pipelines are located. We do not have jurisdiction over those outside forces and damage.

Mr. ANDERSON. What have been the major causes of those injuries? Can you tell us that? What, if anything, can be done to lower the numbers?

Ms. DOUGLASS. Out of the 19, 18 of those injuries were caused by, for instance, a backhoe hitting the pipeline and causing that pipeline to rupture; then a fire would ensue. I think in terms of a regulation or our jurisdiction, I don't believe that there is anything that we can do on that.

We are promoting this one-call system. We put that into effect a few years ago and are encouraging the industry and States to work on advertising that. I believe that we are in the process of evaluating the success of that. Our initial reports are that we feel we have had some good success with it.

Mr. ANDERSON. Under the regulatory——

Ms. DOUGLASS. Putting more money into it or more inspectors wouldn't have helped reduce those 19 injuries.

Mr. ANDERSON. That is hard to see why you couldn't cut it down. Nineteen is better than 200, but it still is the second highest we have had since 1974. Certain care, certain—whether inspection or something, that would surely have helped to cut down those injuries, whether it is caused by a backhoe or anything. I realize that has nothing to do with the pipeline. Maybe working around it they should use extra care with that pipeline.

Under the regulatory scheme for hazardous liquid pipelines, the Federal Government regulates interstate pipelines and establishes minimum regulatory standards for intrastate pipelines. The States, however, can have additional or more stringent standards for intrastate pipelines so long as they are compatible with Federal standards.

How would any intrastate regulations that might not be compatible be resolved? In other words, who can challenge that a State regulation is not compatible with a Federal regulation and where would that challenge be filed?

Ms. **DOUGLASS**. First of all—and I will ask for Lee's help on this—my understanding is that under the Natural Gas Pipeline Safety Act, which was passed in 1968, and the regulations thereafter, we have not ever had that problem. We have not had that problem ever.

We have now passed the Hazardous Liquid Pipeline Safety Act and regulations, and the interstate regulations. We again don't believe that that is going to be a problem. However, if it were a problem—and, Lee, feel free to comment on this—I believe that under the way the system is set up right now, obviously somebody could call us and we would be glad to give our advice on it and work with the States on it. But other than that, I think probably going to court would be the only way you could resolve that at this point.

Mr. **ANDERSON**. What was your rationale in the May 1984 rule for increasing the threshold for the reporting of natural gas pipeline accidents from $5,000?

Ms. **DOUGLASS**. Let me have Lee comment on that. He was involved in writing that regulation. Basically, our feeling was that the $50,000 threshold was appropriate for reporting accidents and $5,000 was just too low a dollar figure.

Mr. **SANTMAN**. That is one of several triggering thresholds: a death, personal injuries, explosion, fire; and in the case of liquid pipelines, the release of liquid that could possibly get into water tables, into drinking water supplies. Those are also triggering. Any one of those events requires a report to be filed. In the absence of any of those, the only thing that occurs is property damage, that is where the increase from 5,000 to 50,000 occurs. For purposes of collecting national statistics on incidents that do not involve a death, do not involve an injury, do not involve risk of pollution of water, and do not involve fire or explosion, we feel that where you are looking at the property damage as the only result that 50,000 is a more appropriate threshold on today's stage.

Mr. **ANDERSON**. I have several other questions, as do my colleagues.

Mr. Shuster?

Mr. **MOLINARI**. Would you yield.

Mr. **SHUSTER**. Sure.

Mr. **MOLINARI**. Can you give us an idea as to the numbers we are talking about countrywide? How many would we have approximately if we talked about 5,000 threshold as opposed to 50,000 so we could get a better understanding of why?

Mr. **SANTMAN**. The numbers of incidents that were reported last year, total failures in the liquid pipeline area, were 203. Of those, zero were deaths, 19 of them were triggered by injuries. In the gas pipeline arena, there were 1,071 reports; 35 of those involved deaths, 239 involved injuries. So I think if you subtract, for instance, the 270 from the 1,000, roughly 750 of those were incidents that were reported to us because there was fire or property damage. The property damage level was the triggering reason for the report being made.

Mr. MOLINARI. That was with the lower threshold?

Mr. SANTMAN. That's correct.

Mr. MOLINARI. Why in God's name are you increasing the threshold 10 times when you are dealing with such small numbers? It doesn't make sense to me in such an important area. If we are dealing with a figure you can't handle, I could understand it. You are talking about 1,200 or maybe less, if I understood your explanation this time. I don't follow the rationale for reducing the requirements.

Mr. SANTMAN. These are for the telephonic reports. These are not for the written reports. This is for getting on the telephone and calling.

Mr. MOLINARI. Makes no difference. Why increase the threshold when you are dealing with such small numbers nationwide on something that is so critically important as a leak or a rupture in the system? I thought I'd hear figures that were just beyond your control. I am listening to what I consider relatively low figures.

Mr. SANTMAN. Well——

Mr. MOLINARI. I withdraw the question, Mr. Chairman.

Mr. ANDERSON. Mr. Lightfoot.

Mr. LIGHTFOOT. Ms. Douglass, do you have any opinion on discriminatory taxation on gas?

Ms. DOUGLASS. No; I have no opinion on that. That taxation issue does not come within our pipeline safety jurisdiction. We have stayed out of that issue.

Mr. LIGHTFOOT. What about the gasline explosion in Beaumont, Ky? Any circumstances there relate to your agency's safety efforts or not?

Ms. DOUGLASS. Yes; I believe they do. We sent our pipeline inspector out there to work with the NTSB—National Transportation Safety Board—and the Kentucky Public Services Commission to find out what happened in that accident. We don't have any reports back on precisely what occurred. As soon as we do, we will be glad to supply that to you.

[The following was received from Ms. Douglass:]

STATUS REPORT: GAS PIPELINE EXPLOSION, BEAUMONT, KY

The gas pipeline explosion at Beaumont, Kentucky, occurred on April 27, 1985. A pipeline 30 inches in diameter failed while under approximately 990 psi pressure. The failure occurred at a location on the pipe which was encased by a larger diameter pipe, which extended under State Highway 90. The Research and Special Programs Administration (RSPA) has no report, as yet. The Kentucky Public Service Commission, acting as the agent for RSPA, is analyzing the accident data and will issue a draft report soon. That report will be reviewed by RSPA and endorsed totally or in part. RSPA, directly and through the Kentucky Public Service Commission, is coordinating its efforts with the NTSB. The RSPA focus is on the circumstances of the accident as they pertain to the Federal pipeline safety regulations. The NTSB focus is on determining the cause of the accident and on the development of recommendations that might pertain to any involved party. The RSPA focus is limited by statute to the pipeline operator. RSPA has an agent relationship, like that with the

Kentucky Public Service Commission, with a total of 12 state agencies. The agencies inspect and collect enforcement data, and RSPA processes each case to completion. Thus, efficiency and effectiveness are increased.

Mr. LIGHTFOOT. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Molinari.

Mr. MOLINARI. Ms. Douglass, on page 7, top of the page, three or four lines down, you indicate, "We will be conducting liquefied natural gas spill tests to better understand vapor dispersion distances."

I get the impression reading that, that there may be some serious doubt as to vapor dispersion now. What is the reason for these tests and what is it that you are seeking to get a better understanding of?

Ms. DOUGLASS. I think I will have Lee answer that question because he has been involved in formulating this research project with the Gas Research Institute with our people, and with the contractors. He knows more of the details.

Mr. SANTMAN. Most of the work that has been done in predicting what will happen when you release a cloud of a flammable gas, whether it be liquefied natural gas, propane gas, or other volatile gases, has been done on a modeling basis, technical calculations, then extrapolating as to what would occur in a real, full-scale situation.

What we are doing here is moving up to full-scale tests to validate the engineers' calculations and estimates. This would give us a greater level of confidence in the engineering calculations and predictions of what would happen in the case of a cloud vapor release.

Mr. MOLINARI. Does that mean—you are not talking about new modeling techniques? You are talking about in the field, creating an actual release and seeing how close that comes to your modeling estimates?

Mr. SANTMAN. That's correct. We will move up in the scale of modeling. We are finding from the small-scale tests that different configurations of barriers have a differing effect on what happens to a cloud. A blank wall a certain height will have one kind of effect. A sharp-shaped object pointing into the direction of the cloud will have another effect on how the cloud is dispersed.

Right now, we are still dealing pretty much with theory and calculations. The approach we are taking is a very conservative one at this point in applying the regulations. I think, as you know, in connection with the proposal involving the Staten Island facility, we would like to know more and have a greater level of confidence in dealing with those kinds of predictions. We are dealing with LNG here, but what we learned out of this will also have application with respect to other gases.

Mr. MOLINARI. When do you expect to conduct those tests? Do you have any target dates?

Mr. SANTMAN. This is a project that will be going on for a 3-year period. In our budget request this year that accompanied the documents to the Appropriations Committee, we laid out the program over a 3-year period. I believe that fiscal year 1987 or 1988 is the concluding year. There are a series of specific actions to be taken. We are also working in conjunction with the private sector, through the Gas Research Institute. We are not jointly funding anything, but we are coordinating so that we do a piece and that they will do a piece and we won't be both doing the same thing or have gaps between what we are doing.

Ms. DOUGLASS. We can provide you with those dates.

Mr. MOLINARI. I would appreciate that very much if you would.

[The following was received from Ms. Douglass:]

LIQUEFIED NATURAL GAS SPILL TEST DATES

The schedule for the spill tests for the liquefied natural gas (LNG) research project is:

Fiscal year 1986: The initiation of a two-year test to be conducted at the DOE National Test Site in Nevada. The funding will include modification of on-site tanks, instrumentation, and the cost of support facilities.

Fiscal year 1987: Continuation of activities started in FY 1986, and the procurement of LNG for two tests.

Fiscal year 1988: Synthesis of test results previously obtained (wind tunnel and full scale) and verification of theoretical models.

Mr. MOLINARI. Mr. Chairman, I would like to follow up with a question.

On page 9 we read that we are going to—talking about a MOU with FERC on this subject, clarifying the existing responsibilities of your Department and the Commission regarding LNG.

Can you give, for the record, the background of this? What reasons are you developing in this memorandum of understanding and who initiated this request?

Ms. DOUGLASS. You want that for the record?

Mr. MOLINARI. If you don't have the answer now.

Ms. DOUGLASS. We have just completed that MOU draft. It is signed now by all the parties. The MOU came about as a result of the Pipeline Safety Act of 1979 and the dialog on the floor between the House and Senate. They wanted us to work on a MOU with FERC in this regard. There were some concerns that we weren't, I believe, cooperating to the extent that the Congress desired.

So that is what prompted this work on the MOU and the conclusion reached.

Mr. MOLINARI. May I ask you this: Is this in any way related to the Staten Island facility test and the hearings before FERC?

Ms. DOUGLASS. The MOU will not affect the Staten Island.

Mr. MOLINARI. I understand that. Was it related as far as the instigation of this discussion? Did it follow those hearings? I know there was a kind of bitterness.

Ms. DOUGLASS. I believe it predated that.

Mr. MOLINARI. The MOU is already executed.

Ms. DOUGLASS. Yes; it was just signed by all the parties yesterday. I will be glad to send you a copy.

Mr. MOLINARI. I would like to receive a copy. I would like to request we receive a copy for the committee records, Mr. Chairman.

Mr. ANDERSON. If there is no objection, so ordered.

[The following was received from Ms. Douglass:]

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
DEPARTMENT OF TRANSPORTATION
AND THE
FEDERAL ENERGY REGULATORY COMMISSION
REGARDING
LIQUEFIED NATURAL GAS FACILITIES

Introduction

The Department of Transportation (DOT), through the Materials Transportation Bureau (MTB) of the Research and Special Programs Administration (RSPA) and the United States Coast Guard (USCG), exercises the authority to promulgate and enforce safety regulations and standards for the transportation and storage of liquefied natural gas (LNG) in or affecting interstate or foreign commerce. RSPA exercises its authority over LNG facilities under the Natural Gas Pipeline Safety Act of 1968 as amended (NGPSA) (49 U.S.C. § 1671, *et seq.*) and the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. § 1801, *et seq.*) and the USCG, under E.O. 10173, the Magnuson Act (50 U.S.C. § 191), the Ports and Waterways Safety Act of 1972, as amended (PWSA) (33 U.S.C. § 1221 *et seq.*), exercises supplementary safety regulatory authority over LNG facilities which affect the safety of port areas and navigable waterways.

The regulations and standards promulgated under these authorities extend, *inter alia*, to the siting, design, installation, construction, initial inspection, initial testing, operation and maintenance of facilities used in the transportation of LNG by any mode and associated storage of LNG. DOT enforces compliance with these regulations and standards through an inspection program and, when appropriate, the imposition of civil, criminal, or equitable remedies. Under critieria established by the NGPSA, states are eligible to assume these regulatory and enforcement functions as they apply to intrastate pipeline transportation and associated LNG facilities. Although these intrastate facilities are not subject to this memorandum, the regulations and standards promulgated by DOT governing pipeline transportation and associated LNG facilities generally apply to both interstate and intrastate facilities.

The Federal Energy Regulatory Commission (FERC), under Section 7 of the Natural Gas Act (15 U.S.C. S 717 et seq.), issues certificates of public convenience and necessity with terms and conditions for facilities proposed for use in the sale for resale or transportation of natural gas, including LNG, in interstate commerce. As required by the National Environmental Policy Act (42 U.S.C. S 4321 et seq.), the FERC prepares environmental impact statements for proposed LNG facilities in conjunction with the issuance of certificates. The FERC also conducts a cryogenic design and technical review of the operational aspects of jurisdictional LNG facilities both during the certificate process and biennially thereafter. Particular emphasis is placed on operational reliability and assurance of continued service to the public.

In addition, the Secretary of Energy under Section 3 of the Natural Gas Act (15 U.S.C. S 717 et seq.) has approval authority for the import and export of natural gas, including LNG. The Secretary of Energy has delegated and assigned to the FERC Section 3 authority to approve gas import and export facilities and their siting.

Purpose

This agreement acknowledges DOT's exclusive authority to promulgate Federal safety standards for LNG facilities used in the transportation and associated storage of LNG in or affecting interstate or foreign commerce. However, under the Natural Gas Act, the FERC exercises the authority to impose more stringent safety requirements than DOT's standards when warranted by special circumstances at any LNG facility within the FERC's jurisdiction. The FERC also exercises its authority to impose requirements which would ensure or enhance operational reliability of its jurisdictional LNG facilities. Such operational reliability requirements are not subject to this Memorandum of Understanding.

The FERC and DOT agree that this Memorandum of Understanding provides guidance and policy for their respective technical staffs and the regulated pipeline industry regarding the execution of their respective statutory responsibilities to assure the safe siting, design, construction, operation and maintenance of fixed LNG facilities.

Therefore, the FERC and DOT agree to the following program:

1. The FERC shall:
    a. Invite DOT to participate in FERC sponsored LNG facility inspections and related technical conferences with facility operators.
    b. Except as provided by paragraph 1(e), refer to DOT for its review and comment any FERC proposed corrective action addressing LNG facility safety matters, whether or not in the form of certificate conditions, that

differ from or are more stringent than DOT's safety regulations and standards. Proposed corrective actions subject to DOT review under this paragraph may result from FERC review of LNG facility certificate applications, inspection of existing LNG facilities, or otherwise.

c. Take final action on a matter referred under paragraph 1(b) only after receipt and consideration of comments provided by DOT in accordance with paragraph 2(c).

d. Provide the following information in writing to DOT when a referral is made to DOT under paragraph 1(b):
    (i) The nature of the hazard, design deficiency, or operational practice to which the proposed corrective action is addressed;
    (ii) The extent to which the LNG safety matter appears to be covered by DOT regulations and standards or industry codes;
    (iii) The corrective action recommended and its estimated cost -benefit impact upon the operator;
    (iv) Whether the recommended corrective action appears to differ from or exceed DOT's LNG safety regulations and standards; and
    (v) Any discussion pertinent to items (i) - (iv) contained in a Final Environmental Impact Statement (FEIS) for the concerned LNG facility.

e. In those instances when an applicant for an LNG facility certificate or an operator of an existing LNG facility voluntarily agrees to take corrective action on a hazard, design deficiency or operational practice in accord with recommendations of the FERC staff, the procedures for referral to DOT contained in paragraphs 1(b) through 1(d) do not apply. When such voluntary agreements are reached, the FERC staff will promptly notify DOT of the agreements and provide appropriate background material.

f. Advise the certificate applicant or facility operator of the details of each matter which has been referred to DOT for review under paragraph 1(b), with notice that the applicant or operator may submit written comments on the matter to DOT and the FERC within a period not to exceed 30 days from receipt of the notice. This time period may be extended only by agreement between DOT and the FERC.

g. When a FEIS is required as part of the FERC decision-making process on the siting, construction and operation of LNG facilities, the FERC staff shall, to the extent possible, describe in the FEIS any LNG safety matters and their impact on the environment or facility operations that are considered by the staff to warrant corrective action or further analysis.

2. The DOT shall:

   a. Evaluate each matter referred to it by the FERC, under paragraph 1, along with any related comments received from an applicant or operator.

   b. Take whatever action DOT considers appropriate in the discharge of its responsibilities in the matter referred by the FERC, including issuing a hazardous facility order or imposing other enforcement remedies as authorized by the NGPSA (see paragraph 2(d)) or the PWSA, instituting rulemaking of either general or particular applicability, issuing an interpretation of an existing safety standard, enforcing an existing DOT safety standard, commenting on the appropriateness of a particular safety standard proposed by the FERC with regard to a particular LNG facility or particular circumstances, or deciding that no action is necessary or that the matter is outside DOT jurisdiction.

   c. Advise the certificate applicant or facility operator and the FERC of the action contemplated by DOT in each matter referred by the FERC, and the approximate time schedule within which final action will be completed, or advise that the matter is outside the scope of DOT jurisdiction, within a period of 60 days from the date of referral. This time period may be extended only when the time period in paragraph 1 (f) is also extended. The date of referral shall be the date when DOT receives an official request for review and comment in writing from the FERC under paragraph 1(b).

d. Exercise NGPSA or PWSA enforcement authority to effect corrective actions recommended and adopted by the FERC and previously concurred with by DOT.

e. Advise the FERC when DOT is going to inspect an LNG facility under FERC jurisdiction and notify the FERC of its findings.

3. Working arrangements.

The DOT and the FERC will designate appropriate staff representatives and will establish joint working arrangements from time to time to administer this Memorandum of Understanding.

4. Effect.

This agreement shall take effect upon signing by authorized representatives of DOT and the FERC and will apply to LNG facility certificate applications filed after the effective date and to LNG facilities in operation on and after that date.

5. Nothing in this Memorandum of Understanding is intended to restrict the statutory authority of DOT or the FERC.

6. DOT and the FERC each reserve the option of suspending, modifying, or terminating their respective commitments contained in this Memorandum of Understanding if any of their respective statutory responsibilities stated herein is altered or abolished in the future. Such action must be preceded by written notice to the other party at least 30 days before exercising this option.

Elizabeth H. Dole 3/29/85

Elizabeth H. Dole, Secretary
Department of Transportation
Date

Raymond J. O'Connor 4/17/85

Raymond J. O'Connor, Chairman
Federal Energy Regulatory Commission
Date

Mr. ANDERSON. Mr. Valentine.

Mr. VALENTINE. I have no questions, Mr. Chairman.

Mr. ANDERSON. I do.

In 1984, the number of violations discovered by State inspectors in the natural gas program increased; is that correct?

Ms. DOUGLASS. The number of violations——

Mr. ANDERSON. Discovered by State inspectors?

Ms. DOUGLASS. Yes.

Mr. ANDERSON. Also in 1984, the number of deaths resulting from natural gas accidents just about tripled; isn't that correct?

Ms. DOUGLASS. That is true.

Mr. ANDERSON. And is it fair to characterize the administration's proposal as not increasing funding for the Natural Gas Safety Program and, as a matter of fact, by merging the funding with the hazardous liquid program, we would probably have a decrease in funding for the State natural gas programs? That's the purpose of the merger, isn't it?

Ms. DOUGLASS. The purpose of the merger is to give the States flexibility to spend their money that they get——

Mr. ANDERSON. If they spend any on new programs, they obviously will be spending less on the other programs? You are holding the same figure at the same level but offering to bring somebody else in?

Ms. DOUGLASS. They will be spending it where they feel the safety dollars would have the greatest safety benefit. That would seem to make sense regardless of how much money you have in the program. If you have $4.5 million in there, that makes sense.

Mr. ANDERSON. I am talking about the natural gas program.

Ms. DOUGLASS. If you put $5 million in, it would still make sense. If you put $6 million in, it would make sense to merge the program.

Mr. ANDERSON. The bottom line is debts have tripled and yet to save the $1 million that NARUC says is needed for the hazardous liquid program or the $500,000 that was authorized last year, the administration wants to cut funding for natural gas pipeline safety; isn't that right? That is the effect of all this.

Ms. DOUGLASS. Well, no, I don't believe that—that isn't how we see it. First of all, the numbers on pipeline safety accidents are always going to fluctuate. I believe that the accident rate is very good. It is certainly by far the safest mode of transportation. The numbers are going to fluctuate.

I want to do everything I can to reduce those 35 fatalities. That is true. However, the accidents and the fatalities are going to fluctuate. When you get as low as we are, I would hope that next year there would be zero fatalities from hazardous liquids line, but I certainly could not guarantee that. It does not mean that the record is bad if there are four fatalities next year.

In addition to that, I do not believe for 1 minute that putting more money into the program is going to have any impact on reducing those deaths or injuries. I believe very strongly in the Pipeline Safety Program. I believe the public wants the Pipeline Safety Program and they want the Federal Government to spend some money on that program. The hard question to me as the Administrator is to figure out how much money is appropriate to spend on that program.

I believe that right now we are promoting pipeline safety and that there is a high degree of confidence in our Pipeline Safety Program. I believe that this confidence is a combination of industry, Federal Government, and State government efforts. But I certainly believe that our program can be better managed.

Mr. ANDERSON. Let me get a different perspective now.

Ms. DOUGLASS. OK.

Mr. ANDERSON. In the total DOT budget in fiscal year 1985 we provided about $15.1 billion in budget authority for highway and highway safety programs on the highway trust fund and an additional $4.5 billion in public transit. That is nearly $20 billion funded out of DOT for just the supplement. Let's put this into perspective.

At a time when natural gas violations are going up and deaths are tripling, the Department does not think they can afford to fund the hazardous liquid program without taking it out of the pocket of the natural gas program? I question this judgment.

It seems to me that maybe double the program, but we are going to be adding something to it—I don't know how much is additional. That was one of my earlier questions. I don't know how much is going to be extra or what they have been doing by doubling this program, but it is obviously going to give them more to do. You are not asking for any more money. Actually, down the road it looks like you are going to be looking for less. I am just wondering if they are not thinking in the wrong direction. It is not that much money. I realize how many people were killed, it is not that important, but it is to them. [Laughter.]

If it happened to me, I'd think it was pretty important.

Ms. DOUGLASS. Looking at it in that same perspective—I don't know what the exact number is—40,000 fatalities on the highways, and we still have people dying from heart disease and children from all sorts of horrible things. You have to wonder where a million dollars or where $500,000 is going to have the greatest safety benefit of terms of really saving lives.

What I am saying is putting another $500,000 into the program, I just do not believe would impact lives or injuries or either of those safety problems.

I am not saying that we cannot do a better job in managing the present resources we have and in making sure that those safety dollars are going more directly to safety concerns. For example, I would like to see—and I am going to work on this—I would like to see us, the Federal Government, work on a plan to direct the inspection dollars to those lines that have the greatest potential for problems.

For example, I think it is probably better to look at urban lines than rural lines. One might want to look at age of a pipeline. One might want to look at the soil conditions.

If we could come up with a formula to help direct those safety dollars to those pipelines that have not had as good a record as other pipelines, and to urban areas, and to areas where there are soil conditions that cause erosion, that would have a greater impact on safety than putting more money into more inspections.

Mr. **Anderson**. I only have one more question. It is more mundane.

Your funding request for the operation of your program anticipates a 5-percent pay cut. Is that cut likely? Do you believe you can operate these programs every bit as effective with a 5-percent pay cut and a 10-percent across-the-board cut in administrative cost, which I understand is in the making?

Ms. **Douglass**. Yes. Yes, we do believe we can do that now. I really do not know where that pay cut is on Capitol Hill. Capitol Hill will have to approve that pay cut. The rumors are it is not going to be approved.

Mr. **Anderson**. I just wanted to make sure———

Ms. **Douglass**. That's what I heard.

Mr. **Anderson** [continuing]. You know what you are saying: 10-percent across-the-board cut in administrative costs at the same time we are doubling up the program?

Ms. **Douglass**. Yes.

Mr. **Anderson**. Thank you very much.

Mr. Molinari.

Mr. **Molinari**. I was very interested in the last answer to the previous question.

If someone were to find 1 million or $5 million and give it to you and say, "Here, we have some extra money," how would you best spend it to achieve the purpose here?

As I listened to your answer, I heard you talk about the emphasis on urban areas because obviously that could take more lives. You talked about obsolescence and dirt and other areas. I began to get the impression—aren't we doing this now?

Ms. **Douglass**. I believe that to some extent we are, but there is not as scientific approach as I would like to see. I think that we can do a better job in helping not only the Federal inspectors but also the States direct those dollars.

Mr. **Molinari**. Is there a set of criteria to determine safety areas that you have looked at to date?

Ms. **Douglass**. Lee really is running that program. He can comment on that.

Mr. **Santman**. We are working very closely with the field leadership in our inspection force and some of the leaders in the States to come up with a series of indicators that would help us establish priority of which pipeline to go look at and what the accepted frequency. There are a lot of variables in this.

One of them, of course, is the track record, whether this pipeline has had a past history, but we cannot limit it to that. You also have to look at the potential, and the potential for problems where there has not previously been a manifest problem involves some of the things that Cynthia was talking about—soil conditions leading to corrosion. Corrosion is the second leading cause of pipeline failures, the principal one being the outside force damage. Corrosion takes many forms.

Another concern is the pressure at which the system is operating, and this leads to the class location arrangement that we have in the regulations, taking into account population density.

In arriving at the right balancing formula or combination of concepts, we are picking the brains of our best field inspectors and people who have been working the inspection scene and trying to combine that with some of the theory.

We are not ready to say we have a magic formula by any means.

Mr. MOLINARI. Let me just take one area so I can get a better understanding.

Let's talk about obsolescence for a second. Is there an age beyond which you say, "We had better start checking the system out. It has been in place *x* number of years, and the potential for a problem exists because of it."

Mr. SANTMAN. We wish that it were that simple. Age is a factor, but probably soil condition is as much of a driving force on the deterioration of pipe as the age is.

There are examples of situations where, for example, pipe that was built by the steel production process just before World War II stands up better than some of the pipe that was built in the 1940's. So age belies the situation.

Ms. DOUGLASS. I think you will be interested in this. We are doing a study of pre-1940 transmission lines. We have asked for data from the industry on leaks. That was to be in by April 11. We are in the process of evaluating this data. I think that will be very interesting to analyze. That information will definitely be coming up to you in the next few months, in September. I believe. That will help.

Mr. MOLINARI. OK. Let me just end with this. You say corrosion is one of the most serious problems?

Mr. SANTMAN. Corrosion is the second leading cause of these failures.

Mr. MOLINARI. The first leading cause would be what?

Mr. SANTMAN. Outside force damage, somebody sticking a backhoe or a piece of equipment into a pipe.

Mr. MOLINARI. As you have indicated, that is pretty difficult to predict, but corrosion I guess you have a better area of predictability.

How do you estimate areas where corrosion could create serious problems?

Mr. SANTMAN. I am getting beyond my technical limits at this point, but it has to do with the geology, the nature of the soil. Obviously, there are some atmospheres that are much more corrosive than others. To compensate for this, there are the techniques of cathodic protection of an induced current to operate as a counterbalance.

Mr. MOLINARI. There is somebody within your Department that is vested with that responsibility of making those determinations?

Mr. SANTMAN. Indeed, there is. A number of our technical people are devoted to that subject of pursuing corrosion problems.

Mr. MOLINARI. Fine. Mr. Chairman, I would like to make a request that those experts submit to the subcommittee a short report on how that determination is made. I would be very interested in it.

Mr. ANDERSON. OK. Can you do that?

Mr. MOLINARI. Can you furnish that from people in your Department who make that determination and the manner in which it is arrived at?

Mr. SANTMAN. Well, we have a number of requirements in our regulations that are intended to combat or address the question of corrosion, to prevent corrosion. It is our technical people that have worked on the development of those standards. Of course, when our inspectors go to a pipeline operator, among the records that they check and among the things that they look at are the records that indicate how well they have been running their corrosion protection program, their cathodic protection, their coating the pipeline, and that sort of thing. That is what is really embodied in their activities.

Mr. MOLINARI. I am simply asking for somebody with the expertise from your Department——

Mr. SANTMAN. We can provide you with a description of——

Mr. MOLINARI [continuing]. To give us the step-by-step procedures by which the Department experts would make an assessment of this problem of corrosiveness and how to make a determination on inspections, et cetera.

Ms. DOUGLASS. Sure; we will be happy to do that.

Mr. MOLINARI. Thank you very much.

Mr. ANDERSON. We will make it part of the record. Submit it for the record.

Ms. DOUGLASS. OK.

[The following was received from Ms. Douglass:]

ESTIMATING AREAS WHERE CORROSION COULD CREATE SERIOUS PROBLEMS

The process of estimating areas where corrosion could create serious problems includes evaluating four objective parameters as a part of the decision as to which pipeline to inspect, plus a highly technical evaluation of a pipeline once an inspector is on site. The parameters are:

1. The period of time which has elapsed since the last inspection;
2. The results of prior inspections (an historical perspective);
3. Any special conditions, e.g.: a liquefied natural gas facility; a liquefied petroleum gas facility; highly volatile liquid facility; number of accidents; types of accidents.
4. The data reported in the operator's annual report, such as leakage rate and unaccounted for gas.

These parameters are reviewed annually by each of the regional chiefs; an annual inspection plan subsequently is prepared with a priority on those operators with the poorest performance record. During an inspection, made with the results of the annual review of all relevant data, an inspector is governed first by all the appropriate subparts of the safety regulations, and secondly by the corrosion control, operations and maintenance subparts of the regulations, because inspection experience has shown that these three subparts most often are violated by pipeline operators.

Corrosion could create a serious problem if a leak from corrosion occurs near people or property; a leak in a remote area is not a serious problem. The most prevalent type of corrosion is galvanic corrosion due to an electrochemical process wherein metal leaves the pipe, resulting in reduced wall thickness, and in severe cases total consumption of the wall. Galvanic corrosion is prevented, or if initiated, is reduced in severity, by the process of cathodic protection. Corrosion protection is required for most pipelines; it is not required for plastic pipelines. Cathodic protection includes the following: the pipelines; the sacrifice of metal from a known source—to the advantage of the metal in the pipeline.

The common method of monitoring the effectiveness of cathodic protection is by electrical measurement. In most cases, a negative electrical measurement of at least 0.85 volts signifies that a pipeline is adequately protected from galvanic corrosion. The electrical readings, usually taken at ground level (without digging down to the buried pipeline), can be verified by exposing the pipeline and physically inspecting the degree of corrosion thought to be present.

In 1984, corrosion accounted for about 13% of all gas pipeline system failures, and 19% of all hazardous liquid pipeline system failures. Given all of the above knowledge, RSPA is continuing to address the subject of corrosion as a part of its rulemaking, enforcement, and research programs. A major rulemaking effort is underway (Docket PS-76) on monitoring cathodic protection, and related concerns. The effort is scheduled to result in a Notice of Proposed Rulemaking by the end of 1985. In its enforcement endeavors, RSPA is stressing the importance of voltage drop through the soil, and how to properly measure it. Recently completed research conducted by RSPA is a major input into the previously mentioned rulemaking effort. The monitoring process (electrical measurement) noted above is the key to determining where corrosion could create serious problems. Other important considerations are the proximity of people and property, the size of the leak (or potential leak), whether the corrosion is isolated or general, the rate of corrosion, the pressure in the pipeline, and the chemical and physical properties of the product in the pipeline. The pipeline safety regulations directly or indirectly address these considerations. If an inspector determines that an operator is not in compliance with each of them, he will initiate an enforcement action designed to bring the pipeline into compliance. The action is carried out through due process of law (49 CFR Part 190). The effort of RSPA in preventing serious problems due to corrosion is the sum of the interdependent subjects and process discussed herein.

Mr. VALENTINE. I got here late. You might have answered this already.

Approximately how many miles of pipeline in this country are we talking about that you have some responsibility for inspecting? Does that cover the intrastate lines?

Ms. DOUGLASS. Overall, inter- and intrastate, we have 1.5 million miles of natural gas pipelines. At the Federal level we have responsibility for the interstate lines. Out of the total 1.5 million miles, the interstate make up a little over 300,000 miles. That would leave 1.2 million miles for which the States have taken on responsibility.

Mr. VALENTINE. The chairman asked you about money and the relationship between funds and an adequate safety program. In percentages, how much of the problem comes from outside forces, construction of roads and so on and people plowing too deep and that sort of thing? In percentages, how much of the problem comes from things other than problems with the lines like corrosion? Can you give us that in percentages?

Ms. DOUGLASS. Yes; I can. I think I might have it here.

Mr. VALENTINE. Just send it to me.

Ms. DOUGLASS. OK. It is about 60 percent, Lee says, of deaths and injuries.

[The following was received from Ms. Douglass:]

PERCENTAGE OF GAS PIPELINE ACCIDENTS DUE TO OUTSIDE FORCES

Accidents to pipelines caused by inadvertent/accidental rupturing of a pipeline by a force(s) exterior to the pipeline are labelled "outside force" accidents. Very often, those responsible for such occurrences are engaged in excavating over or near a pipeline. The statistics on outside force damage, in percentage of all causes of accidents are as follows:

	Distribution systems	Transmission and gathering systems
Calendar year:		
1981	70	50
1982	69	42
1983	70	41
1984	66	36

Similar statistics for liquid pipelines are as follows:

INTERSTATE SYSTEMS

Calendar year:	
1981	41
1982	34
1983	31
1984	26

Mr. **VALENTINE.** Really when you talk about safety, you don't have any way to do anything except react to problems? There is no way you can systematically test these lines, is there?

Ms. **DOUGLASS.** We are doing a study at the request of Congress to look at different ways to test lines. There are things that can be done. For example, you can run what are called "pigs," which is equipment that runs through the line. It is a very, very expensive test to run, but we are doing a study on its cost-benefits. We don't believe that the benefits are there.

There are other ways that you check, as through leak reports and through discoloration of brass which indicates leakage.

I do believe, as I was saying before, that it is very difficult with more money to inspect more pipelines, and improve the injury or the fatality statistics. I think that trying to manage the program better is going to have greater effect on our very good safety record.

Mr. **VALENTINE.** Thank you, Mr. Chairman.

Mr. **ANDERSON.** Any further questions?

[No response.]

Mr. **ANDERSON.** If not, thank you, Ms. Douglass and Mr. Santman, for an excellent presentation.

Ms. **DOUGLASS.** Thank you.

Mr. **ANDERSON.** This was your first appearance before the subcommittee?

Ms. **DOUGLASS.** Yes; I am looking forward to more, though—I hope. [Laughter.]

Mr. **ANDERSON.** Our next witness is Dale Johanson, vice chair, staff subcommittee on pipeline safety, National Association of Regulatory Utility Commissioners; accompanied by Paul Rodgers, general counsel of NARUC, and Charles D. Gray, assistant general counsel of NARUC.

We do have the prepared statement of the association by Dale Johanson, and it will be made a matter of record.

[Statement referred to follows:]

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
SUBCOMMITTEE ON SURFACE TRANSPORTATION

STATEMENT OF

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
1102 INTERSTATE COMMERCE COMMISSION BUILDING
CONSTITUTION AVENUE AND TWELFTH STREET, N.W.
POST OFFICE BOX 684, WASHINGTON, D.C. 20044
TELEPHONE (202) 628-7324

ON

H.R. 2092 AND
THE REAUTHORIZATION OF
THE NATURAL GAS AND HAZARDOUS LIQUID
PIPELINE SAFETY GRANTS-IN-AID PROGRAMS

APRIL 30, 1985

Summary Of

The National Association of Regulatory Utility Commissioners' Testimony on the

Reauthorization of the Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Programs

* The National Association of Regulatory Utility Commissioners (NARUC) strongly supports the reauthorization of the Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Programs as many of our members are current or potential participants in them.

* Under the natural gas and hazardous liquid pipeline safety programs, Federal grants-in-aid are provided to participating States on a matching basis of up to 50 percent of the States' total program costs, thereby creating a uniform national safety program which is carried out at a fraction of the Federal funding level that would otherwise be required.

* Since its enactment in 1968, the natural gas pipeline safety program has proven to be a model of Federal-State cooperation; however, funding continues to be insufficient to provide the full 50 percent matching funds authorized by law.

* Although 17 States have jurisdiction and 6 States are in the process of procuring jurisdiction, the hazardous liquid pipeline safety program is in its fifth year without funding.

* The NARUC Staff Subcommittee on Pipeline Safety has been evaluating merging the Pipeline Safety and Hazardous Liquid Pipeline Safety Programs.

* The NARUC seeks the assistance of the subcommittee in attaining a safer America through its reauthorization of the two pipeline safety programs at the full 50 percent matching funding levels.

Mr. Chairman and distinguished members of the Subcommittee:

I. Introduction

My name is Dale Johanson and I am the Vice-Chair of the NARUC Staff Subcommittee on Pipeline Safety. I am testifying today on behalf of the National Association of Regulatory Utility Commissioners (commonly referred to as the NARUC). Accompanying me today from the NARUC are Paul Rodgers, General Counsel, and Charles D. Gray, Assistant General Counsel.

The NARUC is a quasi-governmental, nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States and the District of Columbia, Puerto Rico and the Virgin Islands engaged in the regulation of utilities and carriers. Our chief objective is to serve the consumer interest by seeking to improve the quality and effectiveness of public regulation in America. As part of that objective, many of the NARUC's member agencies are current or potential participants in the Natural Gas and Hazardous Liquid Pipeline Safety Programs.

We greatly appreciate your invitation to testify on these programs and on H.R. 2092, legislation to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. I would like to begin by emphasizing the importance of the two pipeline safety programs which provide for the implementation of Federally-mandated standards to improve our Nation's pipeline safety. In order to achieve that essential public goal, the programs rely heavily upon a vigorous Federal-State partnership whereby the States voluntarily enforce the

Federal safety regulations. Recognizing the valuable contribution that these programs make to pipeline safety, the NARUC is vitally concerned with the future of the Natural Gas and Hazardous Liquid Pipeline Safety Programs, which are administered through the Department of Transportation's (DOT's) Research and Special Program Administration (RSPA).

With a strong committment to pipeline safety, the NARUC Committee on Gas and the Executive Committee in 1982 established a Staff Subcommittee on Pipeline Safety under the Association's Committee on Gas. This staff subcommittee has been working very hard with the States, the Congress, and the Administration to determine problems in pipeline safety and find ways to improve the safety effort.

During a meeting of the Staff Subcommittee on June 18, 1984 in Colorado Springs, Colorado, the Subcommittee formed six standing task groups in an effort to ensure that the proper attention is given to the various pipeline safety issues being addressed in Washington, D.C. and around the nation. The six task groups are as follows: 1) U.S. Legislative Task Group to provide backup information and standby personnel to assist the NARUC in its work with Congress on pipeline safety; (2) Liquid Rulemaking Task Group to monitor and review "Notices of Proposed Rulemaking" regarding liquid pipeline safety regulations; (3) Gas Rulemaking Task Group to monitor and review "Notices of Proposed Rulemaking" regarding gas pipeline safety regulations; (4) ASME/GPTC Liaison Task Group to maintain a regulatory liaison with the Gas Piping Technology Committee of the American Society of Mechanical Engineers regarding code guide material issued by the ASME/GPTC; (5) NTSB Report Review Task Group to review and make recommendations to the NARUC Subcommittee on the National Transportation Safety Board's reports after they are published; and (6) Technical Publications Task Group to review and make recommendations to the NARUC Subcommittee of all current NARUC publications regarding pipeline safety.

In addition, the NARUC has representation on the Technical Gas and Hazardous Liquid Pipeline Safety Standards Committees formed under the Department of Transportation in accordance with law. The technical committees are composed of safety experts from industry, State and Federal regulation, and the public sector, who meet to review and make recommendations on proposed regulatory changes concerning pipeline safety. Such Federal/State cooperation is the basis for the natural gas and hazardous liquid pipeline safety grants-in-aid programs.

The appeal of these programs, in addition to their obvious value in protecting public safety, lies in the fact that they encourage the States to contribute their own funding and manpower to assist the Federal government in fulfilling its various pipeline safety responsibilities. Federal grants-in-aid are provided to participating States on a matching basis of up to 50 percent of the States' total program costs. As a result, these national safety programs can be carried out at only a fraction of the Federal funding level that would otherwise be required.

Utilizing State resources to implement Federal safety standards reduces the need for a large Federal field staff. In addition, the Federal government gains the benefit of State expertise when enforcement responsibilities are carried out by officials best able to assess the unique requirements of a particular locality.

The overwhelming success of the natural gas pipeline program in reducing the number of accidents demonstrates the important contribution that such a program can make to Federal safety efforts. Believing in the immeasurable benefits derived from these Federal-State partnerships created for pipeline safety, the NARUC strongly supports reauthorization and increased funding for these programs. We respectfully urge the Subcommittee to encourage Federal-State cooperation in attaining a safer America in Fiscal Year (FY) 1986 by approving the reauthorization of the RSPA's Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Programs at $7,138,662.00 and $1,000,000.00 respectively.

II. Natural Gas Pipeline Safety Grants-In-Aid Programs

Since its enactment in 1968, the Natural Gas Pipeline Safety Grants-In-Aid Program[1] has proved to be a model of Federal-State cooperation in its efficient implementation of gas pipeline safety standards. As administered through the RSPA, the pipeline safety program provides up to 50 percent in matching funds to assist participating States in enforcing gas pipeline safety regulations. While the Federal-State partnership in this program has worked effectively, funding in the past has been insufficient to provide the full 50 percent matching funds authorized by law. The NARUC strongly believes that full 50 percent funding is important to the programs continued success, especially since the number of Federal safety standards violations discovered by State inspectors has continued to increase.

---

[1] 49 U.S.C. 1671.

In 1984, 47 States, the District of Columbia and Puerto Rico participated in this program and in 1985, 46 States, the District of Columbia and Puerto Rico are participating.[2] While the high level of State participation has continued, the funding needs have changed. In 1983 the States' requests for grants totaled $5,742,140, in 1984 the request was $6,242,934, and for 1985 the request is $7,138,662.

Congress raised the appropriations for FY 1985 one million above the $3.5 million that was appropriated for FY 1983 and 1984. However, the monies still fall short of 50 percent matching funds. This year only twenty-six States are receiving the full 50 percent of their safety program costs.[3] Without full matching funds, the gas pipeline safety program will suffer.

Federal funds allocated to this program have been put to effective use, permitting many States to establish and perfect State-level pipeline safety activities, as well as to finance

---

[2] See Appendix A for a list of participating States (Idaho lost its inspectors and had to drop out of the program).

[3] See Appendix A.

personnel training, salary and equipment expenses. The States further demonstrate their commitment to this program by contributing over 50 percent of the national safety inspection effort. However, the safety risks which this program is designed to minimize are substantial. Gas and hazardous liquid pipelines in the United States total approximately one and three-quarter million miles and transport more than half of the nation's energy supply. These pipelines carry large quantities of extremely volatile substances, often under high pressure, and expose large segments of the population to risks of potentially catastrophic proportions.

In 1983, despite Federal-State inspection efforts, there were 1,580 gas pipeline failures, resulting in 12 fatalities and 245 injuries. In 1984, while the natural gas pipeline accidents were somewhat down to 1,071 and the injuries to 239, there was an increase in fatalities to 35. What is particularly important to remember in looking at any of the DOT's statistics on the number of gas pipeline accidents and casualties reported is that the dollar figure threshold for accident reporting has been raised. Under a final rule of the DOT released in May 1984, operators must report incidents with losses of $50,000 or more; whereas, the reportable incident figure before July 1, 1984, the date new incident reporting forms should begin to be used, was $5,000 or more.[4] This means that fewer accident reports are being received by the DOT, and therefore, it is erroneous to conclude that accidents are down.

---

[4] 49 Fed. Reg. 18956 (May 3, 1984).

It is also important to remember that the State inspectors are in the business of preventing accidents, not just addressing a problem after the fact. As proof of the States' efforts to prevent accidents, State inspectors found 17,809 violations of Federal safety standards in 1984. The 1984 number of discovered violations was 1,309 above the 16,500 safety standard violations found in 1983.

What the NARUC and its member State commissions wish to impress upon the members of the Subcommittee today is that while we have seen many positive results from the Federal/State gas safety program, the program still has a lot of work ahead as long as safety violations continue to rise. With full 50 percent matching funds, perhaps we can begin to see the number of Federal safety standard violations decline and a corresponding dramatic decrease in the number of fatalities and injuries. Safety is not an area for trimming the budget.

The natural gas pipeline safety program is working and is an excellent example of the ability of the Federal and State governments to cooperate in protecting the public health and safety. The continued overwhelming State participation (all but three States) indicates the States' belief in the program's effectiveness. We urge the members of the Subcommittee to support the States' safety efforts by reauthorizing the Natural Gas Pipeline Safety Grants-In-Aid Program at $7,138,662, as opposed to the $4.5 million proposed by the Administration in H.R. 2092.

III. Hazardous Liquid Pipeline Safety Grants-In-Aid Program

The hazardous liquid pipeline safety program is another Federal-State partnership whereby Federal grants-in-aid are authorized to be provided to participating States for enforcing intrastate liquid pipeline safety. However, the program is in its fifth year and funds have never been appropriated. The success of the natural gas pipeline safety program is a strong indicator that the hazardous liquid pipeline safety program could be equally as beneficial if given the opportunity. The States need the reauthorization of this program so that they may continue their efforts to secure Federal funding. The States are ready and willing to make this program work once they have the proper authorization and appropriations.

Presently, 17 States have jurisdiction for program eligibility through legislation and 6 States are seeking legislation to provide them with jurisdiction.[5] If this safety program is to become a reality, funds must be appropriated; however, once again the budget request for FY 1986 does not include funding for the hazardous liquid pipeline safety program. Like the Natural Gas Pipeline Safety Program, the hazardous liquid program would assist the Federal government in fulfilling its safety responsibilities and at the same time it would reduce the Federal funding level that would otherwise be required.

The NARUC has continued to seek funding for this program. In 1983 and 1984, the NARUC requested that $1 million in start-up funds be provided for the implementation of the hazardous liquid pipeline safety program; however, no funds were appropriated. Without funding the States are unlikely to pick up the program.

---

[5] See Appendix B for a list of these States.

On March 26, 1984, the Research and Special Programs Administration of the DOT issued a Notice of Proposed Rulemaking concerning extending the applicability of hazardous liquid pipeline regulations to intrastate pipelines.[6] The final rulemaking for intrastate hazardous liquid pipeline regulation was published in the Federal Register on April 23, 1985.[7] We understand that the effective date of the regulations will be 180 days from publication. This time frame indicates that by 1986, Federal minimum standards for intrastate hazardous liquid pipelines will be in place and agreements between the DOT and the States will be signed whereby the States agree to adopt the Federal safety standards for the regulation of intrastate pipelines carrying hazardous liquids.

However, without funding the States will be left with Federal regulations for the enforcement of intrastate safety measures and yet no money for implementing this enforcement. It is apparent that the States have an interest in this program and will soon have the regulations available to make it work. With the proper reauthorization and funding, the hazardous liquid pipeline safety program could play a vital role in pipeline safety.

The DOT reports that in 1984 there were no fatalities and 19 injuries caused by 203 hazardous liquid pipeline accidents.

---

[6] 49 Fed. Reg. 11226 (March 26, 1984).

[7] 50 Fed. Reg. 15895 (April 23, 1985).

However, two points should be made about these numbers. First, 19 injuries is the second highest number of injuries reported in the period from 1974 to 1984 (only 1981 was higher with 32 injuries); and secondly, there is no reporting requirement at this time for intrastate hazardous liquid pipelines. The statistics are from records on interstate hazardous liquid pipeline accidents, and while there were no fatalities, the number of injuries has increased. The NARUC and its member agencies are just as concerned with preventing and responding to accidents and injuries that had the **potential** for being fatal.

We strongly urge the Congress to help the State safety inspectors untie their hands for intrastate hazardous liquid pipelines by reauthorizing the Hazardous Liquid Pipeline Safety Grants-In-Aid Program at $1 million over the Administration's request for $850,000 in H.R. 2092.

IV. Merging the Gas and Hazardous Liquid Pipeline Safety Programs

The DOT bill specifically requests that the two programs be merged; however, the agency has not supplied us with information as to how it plans to implement the merger. A working group within the NARUC Staff Subcommittee on Pipeline Safety is currently studying the idea of merging the two grants-in-aid programs. Therefore our response today on this idea is conditional upon findings the working group might make in its future report to the NARUC Staff Subcommittee and, in turn, as determined by the Committee on Gas and the Executive Committee of the NARUC. We anticipate the working group's report to be ready in June of this year.

The State commissions could possibly support a merger of the Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Programs **as long as** additional money was appropriated to support the hazardous liquid program. Unfortunately, as we understand the DOT merger proposal at present, there would be no additional funding for the merged programs. We believe it is critical that the gas program funding not be diluted any further than it already has been without additional funds made available.

While the advantage of a merger might be greater flexibility for the States in administering the programs, the great disadvantage would be a major setback for the gas pipeline safety program. The NARUC does not want to see the State commissions in the position of having to dilute their natural gas programs which have not even reached their needed 50 percent Federal funding. The objective is to improve pipeline safety by having two strong and efficient programs (gas and hazardous liquid), not to have two mediocre programs. As we pointed out earlier, the number of violations of Federal safety standards discovered is **increasing** with respect to gas pipeline. This is not the time to cut-back on the gas pipeline safety program. Absent the historic 50 percent funding levels, many states would withdraw from the program, functioning on their own independent of Federal standards.

Conclusion

Mr. Chairman and members of the Subcommittee, our testimony today has emphasized the important roles which the States can and should play in the implementation of national safety policy. The NARUC firmly believes that true Federal/State partnerships, whereby the States enforce Federal safety standards through the Natural Gas and Hazardous Liquid Pipeline Safety Grants-In-Aid Program, will ensure the effectiveness of a comprehensive safety policy for the transportation of natural gas and hazardous liquids. With sufficient funding, we believe that the programs can fully attain their objectives.

Thank you for your attention.

Appendix A

1985 PIPELINE SAFETY GRANT ALLOCATIONS

STATE	GRANT NO.	REQUEST	ALLOCATION	% OF FUNDING
AL	DOT-GB-50001	$ 301,479	$ 142,216	23
AZ	DOT-GB-50002	$ 315,395	$ 140,202	22
AR	DOT-GB-50003	$ 71,857	$ 71,857	50
CA	DOT-GB-50004	$ 262,500	$ 111,989	21
CO	DOT-GB-50005	$ 71,655	$ 71,655	50
CT	DOT-GB-50006	$ 61,500	$ 61,500	50
DE	DOT-GB-50007	$ 10,520	$ 10,520	50
FL	DOT-GB-50008	$ 46,086	$ 46,086	50
GA	DOT-GB-50009	$ 101,500	$ 89,950	44
HI	DOT-GB-50010	$ 12,500	$ 12,500	50
IL	DOT-GB-50011	$ 173,870	$ 130,913	37
IN	DOT-GB-50012	$ 69,925	$ 69,925	50
IA	DOT-GB-50013	$ 68,900	$ 68,900	50
KS	DOT-GB-50014	$ 105,449	$ 98,381	46
KY	DOT-GB-50015	$ 198,923	$ 118,484	29
LA	DOT-BG-50016	$ 451,846	$ 172,887	19
ME	DOT-GB-50017	$ 13,375	$ 13,375	50
MD	DOT-GB-50018	$ 33,967	$ 33,967	50
MA	DOT-GB-50019	$ 118,440	$ 89,242	37
MI	DOT-GB-50020	$ 96,147	$ 96,147	50
MN	DOT-GB-50021	$ 93,868	$ 93,868	50
MS	DOT-GB-50022	$ 99,757	$ 99,757	50
MO	DOT-GB-50023	$ 123,512	$ 106,643	43
MT	DOT-GB-50024	$ 44,220	$ 44,220	50
NE	DOT-GB-50025	$ 57,710	$ 57,710	50
NV	DOT-GB-50026	4 26,739	$ 26,739	50
NH	DOT-GB-50027	$ 33,185	$ 33,185	50
NJ	DOT-GB-50028	$ 165,215	$ 110,907	33
NM	DOT-GB-50029	$ 118,850	$ 116.875	49
NY	DOT-GB-50030	$ 980,055	$ 334,680	17
NC	DOT-GB-50031	$ 107,221	$ 107,221	50
ND	DOT-GB-50032	$ 18,909	$ 18,909	50
OH	DOT-GB-50033	$ 177,815	$ 127,734	35
OK	DOT-GB-50034	$ 105,585	$ 100,184	47
OR	DOT-GB-50035	$ 49,187	$ 49,187	50
PA	DOT-GB-50036	$ 205,660	$ 117,411	28
RI	DOT-GB-50037	$ 58,358	$ 58,358	50
TN	DOT-GB-50038	$ 132,440	$ 121,555	45
TX	DOT-GB-50039	$1,255,579	$ 430,108	17
UT	DOT-GB-50040	$ 40,370	$ 40,370	50
VT	DOT-GB-50041	$ 30,435	$ 30,435	50
VA	DOT-GB-50042	$ 88,997	$ 82,500	46
WA	DOT-GB-50043	$ 44,150	$ 44,150	50
WV	DOT-GB-50044	$ 136,475	$ 122,623	44
WI	DOT-GB-50045	$ 131,094	$ 112,169	42
WY	DOT-GB-50046	$ 124,846	$ 109,210	43
DC	DOT-GB-50047	$ 81,121	$ 81,121	50
PR	DOT-GB-50048	$ 21,475	$ 21,475	50
TOTAL		$7,138,662	$4,450,000	31

NOTE: THE "REQUEST" REPRESENTS 50% OF THE STATE'S ESTIMATED BUDGET. THE "% OF FUNDING" IS THE PERCENTAGE OF THE BUDGET REPRESENTED BY THE ALLOCATION.

Appendix B

HAZARDOUS LIQUID PIPELINE SAFETY PROGRAM

SUMMARY

States With Jurisdiction	States Seeking Jurisdiction
Texas	Louisiana
California	Oklahoma
Wyoming	Mississippi
Pennsylvania	Alabama
Kansas	Washington
New Mexico	Wisconsin
Montana	
Ohio	
North Dakota	
Arkansas	
Arizona	
New York	
Iowa	
Nevada	
Hawaii	
West Virginia	
Oregon	
17	6

Mr. ANDERSON. Please proceed.

TESTIMONY OF DALE JOHANSON, VICE CHAIR, STAFF SUBCOMMITTEE ON PIPELINE SAFETY, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY PAUL RODGERS, GENERAL COUNSEL; AND CHARLES D. GRAY, ASSISTANT GENERAL COUNSEL

Mr. JOHANSON. Thank you, Mr. Chairman.

It is a pleasure to be here today to present this testimony on the reauthorization of the natural gas and hazardous liquids pipeline safety programs. We have prepared and presented for the record, as you indicated, some rather lengthy written testimony. However, I would like to take just a few minutes to present a brief review of NARUC's position on the Pipeline Safety Program in general and the specific topics are discussed in detail in our written testimony.

Since many NARUC members are either current or potential participants in these Federal-State cooperative natural gas and hazardous liquid pipeline safety programs, the NARUC is vitally concerned with the future of these programs and greatly appreciates the opportunity to testify on the reauthorization of their respective grant-in-aid programs.

These safety programs provide for the implementation of federally mandated standards to improve our Nation's natural gas and hazardous liquids pipeline transportation network. In order to achieve this goal, the programs rely upon a Federal-State partnership whereby the States enforce the Federal safety standards over certain intrastate facilities.

As a result of their pipeline safety activities, States are eligible to receive up to 50 percent Federal funding through the grants-in-aid programs if sufficient funds are allocated for the grant programs.

The benefits these programs provide to the Federal Government include a smaller Federal enforcement staff and accompanied smaller funding requirements and the value of receiving State expertise to assess the unique pipeline safety enforcement requirements of their particular localities.

Since its inception, the natural gas pipeline safety program has proven to be a model of Federal-State cooperation and currently has 46 States, the District of Columbia, and Puerto Rico participating in the program.

However, fiscal year 1986 will be the fifth consecutive year that appropriations for this program have fallen short of the 50-percent matching funds needed to insure a continued high level of State participation. Funds allocated to this program have been put to effective use, permitting many States to establish and/or improve their pipeline safety programs as well as to finance personnel salaries and training and the purchase of needed safety equipment.

However, the safety risks which the program is designed to minimize are substantial. For example, in 1983, gas pipeline failures resulted in 12 fatalities and 245 injuries. In 1984, gas pipeline failures resulted in 35 fatalities and 239 injuries.

We believe it is also important to note here that the number of pipeline safety code violations discovered by State inspectors increased from 16,500 in 1983 to 17,809 in 1984, a difference of 1,309.

For these reasons, the NARUC is requesting $7,138,662 be authorized for the natural gas program in fiscal year 1986. This figure represents full 50-percent funding for the 48 participants based upon their 1985 budget estimates.

The hazardous liquids pipeline safety program, another Federal-State cooperative program, is now in its fifth year and funds have never been appropriated. There are currently 17 States with the proper jurisdiction and 6 States seeking such jurisdiction to enforce the intrastate hazardous liquid safety rules which were published in the Federal Register last week. However, without at least some funds being appropriated, these States may not be able or willing to embark upon a proper enforcement program.

The DOT reports that in 1984 there were no fatalities and 19 injuries caused by hazardous liquids pipeline accidents. However, two points should be made about these numbers.

First, 19 injuries is the second highest number reported over the past 10 years. Second, and possibly most important, there are no accident reporting requirements for intrastate hazardous liquids operators. The States are interested in participating in this program and there are now federally mandated intrastate safety regulations in place.

For these reasons, the NARUC is requesting the authorization of $1 million for their hazardous liquids program in fiscal year 1986.

The DOT bill specifically requests that the natural gas and hazardous liquids grant programs be merged. However, the agency has not supplied any details on how it plans to implement such a merger. A working group within our Staff Subcommittee on Pipeline Safety is currently studying this matter. A report on this study will be presented at a June meeting of the subcommittee, and a recommendation then prepared for presentation to the NARUC Gas Committee at a meeting scheduled for July.

The State commissions could possibly support a merger of the two grant programs if additional funds are made available such that the natural gas program funding will not be effectively further reduced. Unfortunately, the DOT merger proposal does not contain such funding.

The NARUC does not want to see the State commissions in the position of having to dilute their natural gas programs or provide additional State funds at a time when the gas program is already funded at less than the 50-percent level.

Mr. Chairman, the States and the NARUC firmly believe that these safety programs should be and must be proactive in nature rather than reactive. It is too little, too late to react only after a tragedy occurs.

We do not want to have to investigate accidents such as the one in Beaumont, KY, which took five lives this past weekend.

In conclusion, Mr. Chairman, the NARUC respectfully urges the subcommittee to further encourage the continuance of a successful Federal-State cooperative pipeline safety effort by reauthorizing on an individual basis the natural gas and hazardous liquids pipeline safety grants-in-aid programs at the levels of $7,138,662 and $1 million, respectively.

Mr. Chairman and members of the subcommittee, I thank you for your attention and I will now be glad to answer any questions you may have.

Mr. **Anderson**. Thank you, Mr. Johanson.

Has your organization had discussions with the administration or anyone in the administration about the need for funding the hazardous liquids pipeline safety grant-in-aid program? If those discussions have taken place, could you please relate the reasons that were given to your organization for not funding the program?

Mr. **Johanson**. We have been in contact with the administration personnel, Mr. Chairman. During our subcommittee meetings, administrative representatives are regularly in attendance at those meetings. This is one of the things that is usually on the agenda and discussed with them.

The main reason I believe that we have not had any funding requested in the past is, No. 1, of course, the deficit problem that is facing us all and, No. 2, the opinion of the administration that the liquid program will not place a huge burden on the States if it is merged into the natural gas program without additional funds.

Mr. **Anderson**. Your summary statement indicates that 17 States have jurisdiction for program eligibility for hazardous liquids State grant programs and that 6 are seeking legislation to provide them with jurisdiction. Does this mean that those States have adopted or will adopt a Federal standard or does it simply provide the necessary authority for adopting the Federal standard at some future time?

Mr. **Johanson**. My understanding of that is that it provides the opportunity for the States to adopt those standards. It does not mean that they have adopted them or that they will. It simply means that they have the capabilities of doing that.

Mr. **Anderson**. In your statement you say, and I quote:

> This time frame indicates that by 1986, Federal minimum standards for intrastate hazardous liquid pipeline will be in place and agreements between the DOT and the States will be signed whereby the States agree to adopt the Federal safety standards for the regulation of intrastate pipelines carrying hazardous liquids.

Now, in your opinion, what would happen to this program if no money is appropriated for it? For example, do you think the States would sign agreements that you have referred to?

Mr. **Johanson**. I believe that some of the States that are eligible to do so will do that, even if grant money is not made available, yes.

Mr. **Anderson**. Would it be correct to characterize your statements relating to DOT's proposal to merge the two State grant programs has being that you do not support it now and that you would only support it in the future if additional funds are provided to cover hazardous liquid pipeline segments of any merged program?

Mr. **Johanson**. I think that is a very fair characterization of our position at this time, yes.

Mr. **Anderson**. If the natural gas and hazardous liquids pipeline programs are merged without any additional funding, do you anticipate any State withdrawing from the program? If so, how many?

Mr. Johanson. At this time I do not know of any States that have indicated that they will withdraw, no. I would assume that that possibility would certainly exist.

One problem that many States or several States have is that they are limited by State law on the amount of money they can spend for their programs based upon the amount of Federal money that they receive. In the past as well as in the future, any further cuts in the pipeline safety program funds from the Federal Government will not result only in moneys being cut out of the Federal end of it, but will also result in a similar amount of money being cut out of the State end of the program.

States that may receive a 10-percent cut from the grant program will effectively, because of State law, receive a 20-percent cut to their program. We view that as a very serious problem for these States that are in that situation.

A merged program which we believe will effectively reduce funds for the natural gas end of things will only make that problem worse.

Mr. Anderson. Mr. Shuster.

Mr. Shuster. Thank you, Mr. Chairman.

I appreciate your testimony.

I am looking here at a table of the statistical analysis of the accident casualty data on both hazardous liquid pipelines and gas pipelines. On the hazardous liquid pipelines, it shows that for the past 10 years the fatalities per year have always been under 10, in some cases 3, 4, 1, 0 last year, and the injuries in many of those years in fact have been under 10 as well.

Isn't this a safe transportation mode, perhaps the safest transportation mode that we have?

Mr. Johanson. Well, I think those statistics do give that impression. As I mentioned in my statement, though, one of the things that those statistics do not reflect is accidents that occur on intrastate hazardous liquid facilities. These operators are not required to report the accidents.

Mr. Shuster. How many miles are you talking about intrastate versus interstate?

Mr. Johanson. I am not sure. I believe it is somewhere around 11,000 miles.

Mr. Shuster. That is intrastate?

Mr. Johanson. Yes.

Mr. Shuster. How many on interstate?

Mr. Johanson. I am not sure.

Mr. Shuster. On the other hand, if it is intrastate, then that is more of a State problem, and less of a Federal problem?

Mr. Johanson. Well, it is a State——

Mr. Shuster. Our function here is primarily to look at interstate transportation and safety of interstate transportation modes?

Mr. Johanson. Well, I think in overall perspective that is correct, but I think we also have to recognize that the Natural Gas Pipeline Safety Act, as well as the Hazardous Liquids Pipeline Safety Act, vests full responsibility for all of that transportation with the Federal DOT.

Mr. Shuster. Is there any evidence to show that there is any difference in safety between intrastate lines and interstate lines?

Mr. JOHANSON. Here, again, at this time we don't have those statistics, basically again because we don't have any reporting requirements for those intrastate operators.

Mr. SHUSTER. Turning now to the gas pipelines, the fatalities have been running 11, 16, 31, 12, 35.

When we on this committee, on this subcommittee, look at transportation safety, we are talking, for example, about highways, 45,000 or 46,000 fatalities, 700,000 injuries. In fact, there are more fatalities on bicycles than there are from gas or hazardous liquid pipelines.

In the scheme of things, I wonder about how much attention we should pay to this. I understand from your perspective obviously your duty is to focus on this issue. I presume you think that we should be increasing our expenditure of funds for safety in this area.

Mr. JOHANSON. I think one of the things that the States continue to look at are the number of problems that we are finding when we go out and perform our inspections and what is the relative increase or decrease of those problems. As I have indicated, from 1983 to 1984 there was a definite and distinct increase in the number of violations out there, which may not result in the same time period in increased injuries or fatalities or property damage but which certainly has potential of doing so.

As I have further indicated, we are very concerned about this program being proactive and getting out there and finding the problems before an incident occurs. We don't want any fatalities or any injuries. I don't think that is possible, no matter how much money we pour into the program. Things are going to happen, things we don't have control over, and so forth.

However, we feel it is very important—one of the statistics that it is very important to look at is the number of potential problems out there which are indicated by the safety code violations we find.

Mr. SHUSTER. Of course, there is a relationship, too, I am sure, between the age of the pipelines, and there is some point at which as this part of our infrastructure ages there is going to be a deterioration. Do we make any analysis of replacing pipelines and do pipeline companies have programs based on a wear factor that would cause them to routinely replace old pipelines?

Mr. JOHANSON. Speaking for the operators in the State of Missouri, which is where I am from, the larger operators most certainly do have such programs. They look at pipe by age, by the leak history, the number of leak repairs that would be necessary per a given length, and determine on that basis whether or not replacement is necessary.

Unfortunately, some of the small operators, the municipal gas systems, the mass meter operators, they usually don't do anything until something happens.

Mr. SHUSTER. It has been my own experience that oftentimes the problems occur, taking residential areas, not in the natural gas line that is serving them, but actually in the connection from the gas line into the house. Oftentimes that is where the problems seem more serious.

Is this in keeping with your findings?

Mr. Johanson. In the accidents that we have investigated in Missouri over the 6 years that I have been there, I think we generally find that most of our problems have actually occurred with the main portion of the distribution systems. Oftentimes those failures that occur on the main portion of the system, they may follow in by the service line as a means of entering the house.

Mr. Shuster. There might be a pressure in the line?

Mr. Johanson. Yes.

Mr. Shuster. Mr. Chairman, I think I should, for the record, indicate that I was a ditch digger for People's Natural Gas Co. I am probably the only person in the room here who has actually ever laid pipe.

Mr. Anderson. Were you a good one?

Mr. Shuster. I was a very good one. [Laughter.]

Some people think I missed my calling. [Laughter.]

Thank you very much.

Mr. Anderson. Mr. Edgar.

Mr. Edgar. Thank you, Mr. Chairman.

I would like to read just a real brief statement on an amendment which I am going to support to this legislation. I would like your reaction to it.

The amendment which is proposed to be offered at subcommittee markup on the Natural Gas Pipeline Safety Act and on which testimony is being heard at today's hearing, would allow natural gas pipelines access to Federal district courts so that relief from excessive and discriminatory property taxes could be sought in those States which tax pipelines at a much higher rate of assessment than that applied to other commercial or industrial properties. Because these taxes are included in the rate base, the higher rate of property tax assessment by some States results in a higher cost to the ultimate consumer, often in States beyond the assessing jurisdiction. These taxes are authorized by the Federal Energy Regulatory Commission to be included in the rate base. Any reduction in taxes would be required to be passed through to consumers, resulting in a lower price of natural gas to consumers.

This discrimination in tax assessment procedures was formerly used by many States in their taxing of railroads, bus companies, and the trucking and airline industries. In 1976, with the enactment of the Railroad Revitalization and Regulatory Reform Act—the so-called 4-R act—Congress granted relief to the railroads by allowing access to Federal district courts for injunctive relief. Subsequently, the Congress has extended this relief to other businesses in interstate commerce; namely, the bus, trucking, and airline industries.

This amendment follows the language of the so-called 4-R act quite closely. Its purpose is simply to provide the same kind of relief to interstate natural gas pipelines so that such pipelines could challenge property tax assessment in Federal district court if interstate natural gas pipeline properties were taxed at a rate at least 5 percent greater than the rate applied to other commercial and industrial properties in the assessing jurisdiction.

Now do you have any thoughts, working from a State regulatory authority perspective, on the proposal that States be permitted access to Federal courts to strike down discriminatory taxes States may now impose on gas pipeline properties?

Mr. JOHANSON. Mr. Edgar, this is a subject that is totally out of my realm of responsibility and expertise. As far as I know, the association has not prepared any position on this top, either. I would not provide any other comments at this time.

Mr. EDGAR. We will pursue the issue with other witnesses. I thought perhaps the State regulators might have an opinion on the amendment to be offered.

Mr. JOHANSON. At this time, as far as I know, that has not been developed.

Mr. EDGAR. If you, or any people within your association have any additional comments, it would be helpful.

Thank you.

Mr. ANDERSON. Mr. Clinger.

Mr. CLINGER. Thank you, Mr. Chairman.

In your statement, you say that safety is not an area for trimming the budget. This raises a couple of questions.

Have the States, to your knowledge, generally, uniformly embraced this principle? If so, why did Federal assistance for intrastate pipeline safety become necessary in the first place, if, indeed, the States subscribe to that precept?

Mr. JOHANSON. I think initially when the program was started back in 1970, there were several States that did not have State programs. These programs were developed as a result of the Federal funds being made available at that time.

I believe that most of the States have in the past 5 years, when we have been funded at less than 50 percent, made a concerted effort to make up those funds in some manner. However, as I did indicate earlier, some of our States are not able to do this because of restrictive State laws. Even if they wanted to, they simply cannot do it without going back to the legislative process and having the State laws changed to allow that.

The problem we find there is that, as at levels of Government, State governments are in the same position of being in a somewhat conservative fiscal mood. Getting those types of laws changed is very difficult at this time.

Mr. CLINGER. Given the fact that we obviously do have limited resources, are there perhaps other areas of safety which with limited resources could be more effectively used to insure a higher degree of safety? In other words, is this a top priority in your view?

Mr. JOHANSON. It is in my view, yes. The reason is that, again, as I indicated earlier, we do not want to be in a position of reacting to pipeline accidents. It is a very important part of this program to be able to have the funds available to get the inspectors out in the field, to find problems, code violations, if you will, before they, in turn, turn into actual failures that result in injuries and fatalities.

Mr. CLINGER. Your statement is devoted almost exclusively to levels of funding for State grant programs. Can I infer from this that the other aspects of the pipeline safety program are probably developing well?

Mr. JOHANSON. Well, the basic reason that our comments were limited to the safety grant area is because the association is an association of the State commissions that have these programs. I think that there are other portions of the pipeline safety program, such as the Federal level, that are definitely affected by the funding issue where improvements could also be made.

Our statement was limited to the State level because of the type of association that we are.

Mr. CLINGER. So you don't have any specific criticisms or suggestions at this point?

Mr. JOHANSON. No, not at this point, sir.

Mr. CLINGER. Just following up on Mr. Edgar's earlier comment—I am not sure—did you indicate that the association would henceforth be taking some position on this question of property tax and access to the Federal courts or not?

Mr. JOHANSON. I really don't know at this time. I would assume that this subject may very well be on the agenda of the next meeting of the Gas Committee for their action. I believe after the interest shown here today I will probably suggest that be done.

Mr. CLINGER. I think that might be a good idea.

It is pointed out that taxes are included in the rate base. Therefore, it would have an impact.

Mr. JOHANSON. Yes.

Mr. CLINGER. Thank you, Mr. Chairman.

Mr. ANDERSON. Mr. Andrews.

Mr. ANDREWS. I don't have any questions, Mr. Chairman.

Mr. ANDERSON. Anything further?

[No response.]

Mr. ANDERSON. If not, well, thank you very much, Mr. Johanson, for an excellent presentation.

Mr. JOHANSON. Thank you, Mr. Chairman.

Mr. ANDERSON. Our final witnesses are part of a panel consisting of Hon. Marlow W. Cook, Robert W. Bailey, and James W. McBride.

I do want to welcome the former Senator from Kentucky with us today.

Mr. COOK. Thank you, Mr. Chairman.

Mr. ANDERSON. He is now an attorney representing Bishop, Liberman, Cook, Purcell & Reynolds.

Mr. Bailey is the tax manager of Tenneco.

Mr. McBride is with the law firm of Laughlin, Halle, Gibson & McBride.

The full text of your prepared statements will appear in the record at this point.

[Statement referred to follows:]

Before the
U.S. House of Representatives
Committee on Public Works and Transportation
Subcommittee on Surface Transportation

Hearings on H.R. 2092, to amend the
Natural Gas Pipeline Safety Act of 1968 to
authorize appropriations for fiscal years
1986 and 1987, and for other purposes

Statement of Marlow W. Cook,
Partner, Bishop, Liberman, Cook,
Purcell & Reynolds
Washington, D.C.

STATEMENT OF MARLOW W. COOK
ON
DISCRIMINATION IN PROPERTY TAXATION OF INTERSTATE COMMERCE

My name is Marlow W. Cook and I am appearing before this Committee to address a matter of equity in the state taxation of natural gas pipeline property operating in interstate commerce. A coalition of pipeline companies has formed to bring to the attention of Congress a present inequity that needs correction through federal legislation.

There exists in this country a pattern of discriminatory assessment practices in many states which result in property taxes higher than the proportion of taxes paid by other commercial and industrial property owners in many of the 45 states in which pipelines operate.

Discriminatory tax treatment can take several forms. One such form is based on legal classification of property by states which use a statutory classified property tax system that place gas pipelines in the highest classification. Some of these classification systems grew out of court suits over the practices of state assessors in treating utilities, including pipeline companies, unfairly. The state answer to this was to amend the law to provide for a discriminatory classified property tax system.

A second form is de facto classification where disparity in assessment ratio is reflected in the level of assessment used by the state tax assessors. This goes on despite state constitutions which mandate full and fair assessments.

Moreover, as soon as a court declares the discriminatory tax to be illegal, the state takes steps to legalize what it was doing illegally. Recently one state passed legislation which would classify utility property at 30% of fair market value while setting the percentage at 15% for all other property. The effect of this is to tax pipelines 100% greater than commercial and industrial property. Other states have enacted laws setting percentages of assessed value on gas pipeline property from 30% to 67% higher than other commercial and industrial property.

A third form of discriminatory tax treatment is through improper valuation and allocation methods. Despite state uniform valuation laws that require all properties to be valued at market value, in practice, what occurs is that natural gas pipelines are valued at market value, or more, every year - while other properties are valued as infrequently as every 5 to 10 years.

A form of tacit discriminatory tax treatment is the ineffectiveness of state court remedies. Seemingly many of the problems mentioned above could be resolved in state courts. However, appeals made to State Tax Boards or Commissions fall upon deaf ears. Subsequent appeals to a state court result in the court deferring to the findings of the state tax agency. The railroads ran this same "Catch-22" cycle until federal legislation prohibited discrimination in the state taxation of railroad property.

I can assure you that litigation to achieve fairness for pipelines in state courts would be extremely expensive, time-consuming, and fruitless in view of the experience of all utilities. Ultimately, discriminatory taxes add to the cost of service which is paid by the consumer. Administrative proceedings on property tax assessments are so structured that it is almost impossible for a natural gas pipeline to gain relief. The original administrative appeal board in some states is closely associated with the assessing body. Appeal to the courts is from the administrative body, but grounds for appeal are so narrow and the opinions of the administrative board are written in such a way as to make it extremely difficult to gain equitable treatment.

In 1938 the United States Code was amended at 28 USC §1341 to limit the use of Federal District Courts for suits for injunctive relief for property owners against state taxing agencies. This was done to protect the states ability to collect general revenues for the orderly operation of state and county business. However, where interstate commerce is affected by discriminatory, burdensome tax assessment, an exception should be made to permit an opportunity to prove discrimination in Federal District Court.

Under current federal law, there is no provision to prohibit discriminatory tax treatment of property belonging to interstate natural gas pipeline companies. With respect to property belonging to other companies operating in interstate commerce, several laws have been passed to prohibit discriminatory tax treatment very similar to that which interstate natural gas pipeline companies currently experience. The railroad industry sought and received relief in the Railroad Revitalization and Regulatory Reform Act of 1976, the so-called, "4-R Act" (Pub. L. No. 94-210). The Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. No. 97-248) protects airlines from discriminatory taxes. The trucking industry was granted relief in the Motor Carrier Act of 1980 (Pub. L. 96-296), a federal approval. Therefore, it becomes relatively easy for a state assessor to apply a higher assessment ratio against pipeline property, since the industry cannot relocate to a better tax climate.

Moreover, gas pipelines operating in interstate commerce serve consumers in states far beyond its borders. Since the additional taxes are passed on as "cost of service" to the consumer, the taxing state has effectively "exported" its tax burden to citizens of other states. States which classify interstate gas pipeline property at a higher percentage of value than on other property are creating a discriminatory burden on interstate commerce.

There are also several misconceptions which must be clarified. Historically, the foundation of property taxation was based on the premise that a property owner would share in the cost of local services in proportion to the value of his property in relation to the value of the total property in that governmental unit. That foundation now has been shattered through selective grants of exemption and inequitable property classification systems.

Secondly, tax authorities perceive the gas pipeline industry as having "deep pockets" and therefore "fair game" for those who are trying to protect both their source of revenue and the other classes of taxpayers. This practice has been corrected for railroads, airlines, trucks and bus companies. The old rationale is still applied to natural gas pipeline companies, however, and the logic is as false today as it was for the other industries before they were granted relief.

A final misconception is that tax savings obtained through federal legislation would be a direct benefit to the industry's balance sheet. However, the fact is that since the natural gas pipeline industry is regulated by the Federal Energy Regulatory Commission, any reduction in property taxes obtained through this legislation would flow through directly to the consumers. The only industry benefit comes through the demonstration of continued good faith efforts to halt the rising price of the product.

CONCLUSION

Current law should be amended to prohibit discriminatory state tax treatment of property of interstate natural gas pipeline companies so as to remove an undue burden on interstate commerce. The United States Code presently contains an antiinjunction provision protecting state governments from suits which would interfere with the orderly assessment of taxes for the collection of general revenues. An exception should be adopted where interstate commerce is adversely affected. Prohibition of this discriminatory tax treatment would promote equity and fairness as between the state property tax treatment of interstate natural gas pipeline company property and the property of other commercial and industrial companies not subject to discriminatory tax treatment. In addition, the prohibition of discriminatory tax treatment of interstate natural gas pipeline companies would be consistent with the policy and Congressional intent underlying recent legislation prohibiting such discriminatory state tax treatment of airlines, buses, trucks and railroad companies.

April 30, 1985

Before the U.S. House of Representatives
Committee on Public Works and Transportation
Subcommittee on Surface Transportation

Hearing on HR 2092, to amend the Natural Gas Pipeline
Safety Act of 1968 to authorize
appropriations for fiscal years 1986
and 1987, and for other purposes.

Statement of Robert W. Bailey
Manager, Property Taxes, Tenneco, Inc.
Tennessee Gas Pipeline Company

April 30, 1985

STATEMENT OF ROBERT W. BAILEY
ON
THE EFFECT OF PROPERTY TAX DISCRIMINATION ON INTERSTATE NATURAL GAS PIPELINE COMPANIES

Mr. Chairman, I am Robert W. Bailey speaking on behalf of a coalition of 19 federally regulated interstate gas pipeline companies.

I am a Manager of Taxes for Tenneco Inc., Tennessee Gas Pipeline Company Division, having worked with property taxes for the past 18 years.

Included in this statement is a schedule for the record showing the estimated effect this proposed legislation would have in those states utilizing a discriminatory form of classification for *ad valorem* tax purposes.

The tax data used in this schedule was extracted from the Federal Energy Regulatory Commission Form No. 2 (Annual Report of Natural Gas Companies) for the year ended December 31, 1983 for each of the more than one hundred gas pipeline companies under federal regulation.

The schedule reflects an estimate of the adjustment to our industry's tax burden in those several states which presently discriminate against interstate natural gas pipeline companies when compared to other commercial and industrial taxpayers. Perhaps this is a good time to look at the schedule and explain its contents. In Alabama, for example, utilities are assessed at 30% of fair market value, all property not otherwise classified at 20% and agriculture, forest and residential property at 10%. Consequently, gas pipelines are assessed by statute 50% greater than other commercial and industrial properties, and 200% greater than farm and residential properties.

Generally, statutes of most states require that all property be valued equally and uniformly on the basis of fair market value. However, this law is rarely enforced. In practice, only state assessed pipelines and other public utilities are revalued annually at full fair market value. Locally assessed properties are revalued infrequently which results in annual assessments on these properties which are only a fraction of the fair market value required by law. I am personally aware of a Mississippi county in which the local real estate had not been revalued for more than 25 years prior to 1984.

I would like to call your attention to some recent examples of the discrimination which exists with respect to state tax assessments on natural gas pipelines.

In 1983, the State of Ohio passed legislation reducing the personal property assessment rate. Essentially, the rate on qualifying property was to be dropped from 35% to 25% in increments of 1% per year. For purposes of this reduction, all qualifying property was assumed to be subject to an assessment rate of 35% at the outset regardless of the rate at which the property was actually assessed for the preceding year. While airlines, railroads and trucks received the benefit of the new federal legislation along with commercial and industrial property, natural gas pipelines did not and continue to be taxed at 100%.

A recent decision of the Oklahoma Supreme Court with respect to *ad valorem* assessments represents another example of discrimination against certain types of public utility property including natural gas pipelines. The court had recently held that a system which does not equalize *ad valorem* assessments throughout the State is unfair and invidiously discriminatory and that the Oklahoma Legislature manifestly intends to equalize *ad valorem* assessments so that every parcel and item of taxable property in the state would be assessed at the same percentage of its value. The court implemented this decision in two related cases. In the first case, the court rejected variances between 8% and 18% as being inequitable. In the second decision, the court determined that for 1982, a 12% ratio with permissible intercounty deviations of 3% above and below the mean, should apply to all property in the state subject to ad valorem taxes. As a result of these decisions, most public utilities joined to seek equalization before the Oklahoma Supreme Court. The court ruled, however, that the equalization decisions did not apply to public utilities.

As I have previously mentioned, in Alabama, utility property, including pipelines, is assessed by statute 50% greater than other commercial and industrial properties, and 200% greater than farm and residential properties. In a recent case, a taxpayer contended that its pipeline should not have been classified as utility property since (i) Alabama's statutory definition of utility property was "overly broad" and violated the equal protection clauses of the United States and Alabama Constitutions; and (ii) the statutory definition for property tax purposes was inconsistent with that used for purposes of Alabama's gross receipts tax. Both of these arguments were rejected by the Alabama Court of Appeals which concluded that it was reasonable to classify pipelines as public utilities for ad valorem tax purposes and that the definitional terms of Alabama's property tax statutes were sufficient to accomplish this result. The court observed that had Congress not specifically forbidden the states to tax property of railroads, airlines or motor carriers at a higher assessment ratio applicable to pipelines, then such property would be subject to the same classification applicable to the taxpayer.

These are examples of the discrimination in the assessment of natural gas pipeline properties compared to the assessment of the property of other taxpayers.

The vast majority of states centrally assess pipelines and other public utilities at the state level by an agency such as a State Tax Commission or Department of Revenue. They have the responsibility of annually assessing all the property of public utilities within that state and then distributing this assessed value to the local taxing jurisdictions where the property is physically located. Our pipeline properties are assessed by the same state administrator and in the same manner as that of the railroads. We are asking Congress to grant interstate natural gas pipelines the same right for fair and equitable assessments of our properties as has previously been granted by Congress to the railroads, motor carriers, buses and airlines.

Since passage of the railroad "4-R Act," many state administrators have asked us, "When are the pipelines going to obtain their "4-R type" of legislation? If the railroads deserve it, then certainly the pipelines do also." Passage of this legislation would not come as a surprise or shock to these officials.

My purpose in coming here today is to point out this existing unfair practice as it relates to natural gas pipelines and to urge Congress to take the necessary action to correct this discrimination. The law should be amended to allow our gas pipeline companies access to federal district courts so that relief from excessive property taxes could be sought in those states which discriminate. Because these taxes are included in the rate base, the higher property tax assessments by some states results in higher costs to the ultimate consumer, often in states beyond the assessing jurisdiction. Thus, consumers in one state must pay for the higher rate of tax assessed by another state. These taxes are authorized by the Federal Energy Regulatory Commission to be included in the rate base of gas, and any reduction in taxes would be required to be passed through to consumers as well, resulting in a lower price to consumers. The only benefit to the industry is the satisfaction of participating in an effort to halt the rising price of our product.

Thank you, Mr. Chairman, I will respond to any questions.

April 30, 1985

NATURAL GAS PIPELINE COMPANIES
EFFECTS OF PROPOSED FEDERAL LEGISLATION
BASIS OF STUDY - 1983 TAX YEAR

"COLUMN A"	"COLUMN B"	"COLUMN C"	"COLUMN D"	"COLUMN E"	"COLUMN F"
STATE	1983 TAXES (1)	PIPELINE INDUSTRY LEVEL OF ASSESSMENT	OTHER COMMERCIAL & INDUSTRIAL LEVEL OF ASSESSMENT	1983 PIPELINE TAXES @ COMMERCIAL & INDUSTRIAL LEVEL	ESTIMATED DISCRIMINATORY TAXES
				COL. B / (C / D)	COL. B - COL. E
ALABAMA (2)	2,196,109	30%	20%	1,464,073	732,036
ALASKA	0			0	0
ARIZONA (2)	13,823,461	38%	25%	9,094,382	4,729,079
ARKANSAS (3)	8,499,278	20%	12%	5,099,567	3,399,711
CALIFORNIA	719,204			719,204	0
COLORADO	7,377,182			7,377,182	0
CONNECTICUT	609,192			609,192	0
DELAWARE	43,030			43,030	0
FLORIDA	1,381,864			1,381,864	0
GEORGIA	1,942,051			1,942,051	0
HAWAII	0			0	0
IDAHO	1,118,584			1,118,584	0
ILLINOIS	2,477,024			2,477,024	0
INDIANA	2,940,151			2,940,151	0
IOWA (3)	44,505,243	100%	65%	28,928,408	15,576,835
KANSAS (3)	22,974,122	30%	12%	9,189,649	13,784,473
KENTUCKY	4,162,126			4,162,126	0
LOUISIANA (2)	35,941,896	25%	15%	21,565,138	14,376,758
MAINE	0			0	0
MARYLAND	9,849,018			9,849,018	0
MASSACHUSETTS	2,940,656			2,940,656	0
MICHIGAN	41,316,658			41,316,658	0
MINNESOTA (2,4)	15,547,407	43% (PP)	0.00% (PP)	3,109,481	12,437,926
MISSISSIPPI (2)	9,673,581	30%	15%	4,836,791	4,836,790
MISSOURI	2,703,463			2,703,463	0
MONTANA (2)	7,466,237	100%	32%	2,389,196	5,077,041
NEBRASKA (3)	7,760,491	100%	70%	5,432,344	2,328,147
NEVADA	754,460			754,460	0
NEW HAMPSHIRE	232,475			232,475	0
NEW JERSEY	4,559,666			4,559,666	0
NEW MEXICO	3,503,465	100%	67.5%	2,364,839	1,138,626
NEW YORK	44,884,753			44,884,753	0
NORTH CAROLINA	543,070			543,070	0
NORTH DAKOTA	6,916,702			6,916,702	0
OHIO (2,4)	21,746,111	100% (PP)	35% (PP)	10,438,133	11,307,978
OKLAHOMA	14,744,949	26%	12%	6,805,361	7,939,588
OREGON	2,325,405			2,325,405	0
PENNSYLVANIA	924,752			924,752	0
RHODE ISLAND	975,358			975,358	0
SOUTH CAROLINA	903,781			903,781	0
SOUTH DAKOTA	3,652,278			3,652,278	0
TENNESSEE (2)	2,877,212	55%	40%	2,092,518	784,694
TEXAS	33,266,583			33,266,583	0
UTAH	1,835,085			1,835,085	0
VERMONT	0			0	0
VIRGINIA	4,489,974			4,489,974	0
WASHINGTON	2,343,551			2,343,551	0
WEST VIRGINIA	10,895,221			10,895,221	0
WISCONSIN	2,646,983			2,646,983	0
WYOMING	4,679,592			4,679,592	0
WASHINGTON, D.C.	298,967			298,967	0
TOTALS	417,968,421	-	-	319,518,739	98,449,682

NOTES: (1) EXTRACTED FROM FERC FORM NO. 2 - ANNUAL REPORT OF NATURAL GAS COMPANIES - YEAR OF REPORT 12-31-83
******

(2) REFLECTS STATES WHICH HAVE "LEGAL" CLASSIFICATION; ALL OTHER STATES LISTED REFLECT "DE FACTO"

(3) BASED ON 1982 BUREAU OF THE CENSUS STUDY ENTITLED - TAXABLE PROPERTY VALUES AND ASSESSMENT SALES PRICE RATIOS

(4) COLUMN "E" CALCULATION BASED ON FOLLOWING FORMULA - (COL. B * 80%) / (C / D) + (B * 20%) (THIS ADJUSTMENT PERTAINS ONLY TO PERSONAL PROPERTY WHICH, IN BOTH MINNESOTA AND OHIO, IS ESTIMATED TO BE 80% OF TOTAL TAXES).

Before the

U.S. House of Representatives

Committee on Public Works and Transportation

Subcommittee on Surface Transportation

Hearings on H.R. 2092, to amend the

Natural Gas Pipeline Safety Act of 1968 to

authorize appropriations for fiscal years

1986 and 1987, and for other purposes

Statement of James W. McBride, Partner

Halle, Laughlin, Gibson and McBride

Washington, D.C.

STATEMENT OF JAMES W. McBRIDE

ON

THE NEED FOR A FEDERAL REMEDY AND FEDERAL COURT JURISDICTION TO ELIMINATE DISCRIMINATORY STATE TAXATION OF NATURAL GAS PIPELINE COMPANIES

My name is James W. McBride, a Partner in the Washington office of the law firm of Laughlin, Halle, Gibson and McBride. I have been involved with state and local taxation of interstate carriers for over 15 years and have been specifically involved in the litigation of cases involving discrimination in state taxation for 10 years.

This statement addresses proposed legislation which would prohibit discriminatory state taxation of natural gas pipeline companies, and would provide a federal forum to redress that discrimination. Other witnesses have and will present evidence and testimony concerning the extent of discrimination against natural gas pipelines in state property taxation. The purpose of this statement is to emphasize the necessity of access to federal courts, which is made necessary by the inadequacy of state administrative and judicial remedies to provide relief to interstate pipeline carriers.

The Congress, and more specifically the Senate Committee on Commerce, Science and Transportation, has already extensively researched the adequacy of state remedies for interstate carriers, including pipelines, in connection with its consideration of Section 306 of the Railroad Revitalization and Regulatory Reform Act. This statement will address the findings of the investigation in considering legislation, more specifically the Doyle Report

(National Transportation Policy, report of the Committee on Commerce, S. Rpt. No. 445, 87th Cong., 1st Sess., 1961), and Discriminatory State Taxation of Interstate Carriers, S. Rpt. No. 91-630, 91st Cong., 1st Sess., (1969), with particular emphasis on pipeline company litigation.

1. Existence of Discrimination

The majority of states provide for the assessment of pipelines and other interstate carriers by a state agency rather than by county or municipal assessors. This practice results from the fact that the property of interstate carriers, and particularly pipelines, not only covers a number of states but also crosses several counties within a state. It is a well accepted practice that public utility property, such as pipelines, should be appraised for assessment purposes as operating units rather than by local assessment of individual parcels of property within a county or municipality. Therefore, in the vast majority of states, a natural gas pipeline company is appraised for property tax purposes as an entire interstate operating unit with the application of an allocation formula to allocate a portion of the total unit value to the state, and distribution of the unit value to counties and municipalities.

As a rule, this appraisal or determination of market value is performed by staff members of the state's department of revenue. The pipeline property is appraised annually by professional appraisers who undertake to value the pipeline property each year for property tax purposes at no less than its fair market value.

Other commercial and industrial property in the vast majority of jurisdictions is appraised for property tax purposes at the local level by county assessors. Local assessment practices often lack the sophistication or professionalism of state assessment practices, and, as a result, other commercial and industrial property is appraised for property tax purposes at a lower percentage of market value than is the case with natural gas pipeline property. In virtually every state other commercial and industrial real property is reappraised for property tax purposes infrequently, while natural gas pipeline company property is, in those same states, reappraised annually by the state. As a consequence, by operation of inflation alone, locally assessed business property is invariably appraised for tax purposes at a lower percentage of market value than natural gas pipeline company property. In either instance, whether de facto discrimination has been caused by poor local assessment practices, or whether de facto discrimination has been caused by operation of inflation, the natural gas pipeline companies necessarily bear a greater portion of the property tax burden, because pipeline appraised values are allocated to local governments and the same tax rate is applied by local governments to disproportionate values or assessments.

To determine whether properties are being assessed on a fair basis, there needs to be some comparative analysis of the properties of utilities and commercial and industrial owners. This had led to the development of a test known as a sales assessment ratio study which is in widespread use by property tax administrators. The extent of _de facto_ discrimination in property taxation can be shown by such a sales assessment ratio study. The ratio study is a statistical measurement. The sales assessment ratio study determines the average level of assessment of locally assessed real property relative to its market value. The ratio of assessed value to market value of property is determined by examining the affidavit of value or deed stamps on a recorded deed and comparing that value to the tax assessors' appraised value for ad valorem tax purposes. The assessed value is the numerator; the selling price is the denominator. The resulting percentage is the ratio of assessed value to market value for the individual sale sample. Individual samples are edited to exclude transfers which do not appear to be at a arm's length, such as transfers between family members, or related corporations. Those sample ratios surviving the editing or verification process are then used to calculate average levels of assessment or levels of appraisal for assessment purposes.

The Bureau of the Census conducts a sales assessment ratio study in each state every five years as a part of the Census of Governments. Invariably, the results of the Census Bureau ratio study show that locally assessed commercial and industrial real property is, on an average, assessed substantially below the level of assessment prescribed by state statute. As an example, in the

State of Kansas, the 1982 Census of Governments, which was just recently published, shows that locally assessed commercial and industrial real property is assessed at 12% of market value, whereas the level of assessment mandated by statute in Kansas is 30%. Thus, due to de facto discrimination, each natural gas pipeline company in Kansas pays a disproportionate share of the property tax when its state determined value is apportioned to the Kansas counties, because it is thereby required to pay property taxes on the basis of 30% of value, while other businesses in the same county pay property taxes on the basis of 12% of value.

The situation with regard to locally assessed commercial and industrial personal property is no better. State tax administrators in most jurisdictions candidly admit that the business personal property tax is poorly administered in most counties, and that, as a consequence, large amounts of business personal property escape taxation altogether. Even those counties which do attempt to appraise business personal property annually at the statutory assessment level fall far short of the mark because of inadequate resources available to local assessors to administer a tax that is extremely difficult to administer. In addition, several states (e.g. North Dakota and Iowa) in recent years have eliminated commercial and industrial personal property from the tax base by exempting it. While business personalty is exempt, the personal property of centrally assessed taxpayers remain subject to tax. This trend, resulting in inequality in taxation for pipelines, can be, and should be, effectively curtailed by directing courts to consider exempt business property in determining the effectiveness of commercial and industrial personal property assessment practices. Types of property traditionally exempt, such as property devoted to religious, educational and charitable uses, would, of course, not be affected, because of their non-business character.

There is another form of de facto discrimination in property taxation. In some jurisdictions the discrimination resulting from lower than market values for locally assessed commercial and industrial property is compounded by determining values for utility and pipeline property at values which are higher than market. Although overvaluation has not been as much of a problem for natural gas pipelines as undervaluation of locally assessed business property, the proposed legislation should and does permit the federal courts to consider the level of assessment of the natural gas pipeline as well as that of local business property, which is essential to prevent any effort by a state to circumvent federal prohibition of tax discrimination by the simple expedient of overvaluation.

2. Lack of an Adequate Remedy

The majority of states provide for administrative review of tax assessments before some type of adminstrative tribunal, such as the State Board of Equalization, the State Tax Appeal Board, the Tax Commission, or some similar body. These adminsitrative review agencies are staffed by members who are appointed by the governor, with or without the concurrence of the legislature, or who serve by virute of political office. Unfortunately, these agency members are usually closely connected with the revenue department staff members whose appraisals they are obligated to review. One striking example is the statutory scheme in Wyoming. The governor in Wyoming appoints three tax commissioners, who are the executive heads of the Wyoming Department of Revenue and Taxation. These same three commissioners also comprise the State Board of Equalization. If the pipelines are dissatisfied with the assessment, they must file their appeal with that same State Board of Equalization which initially approves the assessments in the first place.

In addition to the fact that the make-up of these administrative tribunals relies on political considerations, their determinations of inequitable assessments against pipelines are foreclosed by principles of review that place pipelines at a disadvantage. For example, three pipelines recently appealed their assessments in the State of Iowa to the Iowa State Board of Tax Review. In denying the appeals of the pipelines, the Board noted that, in proceedings before the Board, there exists a strong presumption that the Department of Revenue has properly performed its valuation function, and that the appealing pipelines had a heavy burden of showing by clear and convincing evidence that the Department had acted arbitrarily, capriciously, or illegally. It should be noted that the Iowa legislature had removed this heavy burden of proof for locally assessed taxpayers, but the Board concluded as a matter of law that centrally assessed taxpayers, such as pipelines, still carried a heavy burden of proof. In the Matter of Michigan-Wisconsin Pipe Line Co., Williams Pipe Line Co. and Natural Gas Pipeline Co. of America, No. 302 (Iowa State Board of Tax Review, filed August 17, 1983).

Interstate carriers such as pipelines fare little better before the state courts than they do before administrative tribunals. This is because, in almost all states, state judicial review of assessments is narrow in scope. Almost all states employ standards of judicial review which require the courts to "rubber-stamp" approval of the assessments in the absence of clear evidence of arbitrary, capricious, or illegal action, or of an absence of substantial and material evidence. As a practical matter, such review standards can rarely be met. As the Doyle report pointed out in regard to state appeals by interstate carriers, "The burden thus imposed on the complaining party to overturn decisions of assessors or action by state equalization agencies is obvious." See p. 458.

Even more discouraging is the willingness of some state courts to uphold undisputed discrimination in taxation in spite of tax uniformity provisions of state law. The Oklahoma Supreme Court in State ex rel. Poulos v. State Board of Equalization, 646 P.2d 1269 (Okla. 1982), held that the State Board of Equalization must equalize tax assessments of locally assessed taxpayers for the 1982 tax year among the counties of Oklahoma because of the Oklahoma constitutional requirement of "uniformity and equality of taxation on a statewide basis." (p. 1293). Two telephone companies in Oklahoma later appealed to the Oklahoma Supreme Court for relief from tax discrimination for the same tax year. Natural gas pipelines operating in Oklahoma also appeared in the case as intervening plaintiffs. McLoud Telephone Company v. State Board of Equalization, 655 P.2d 1037 (Okla. 1982). In the case of the telephone companies, the Oklahoma Supreme Court adopted a completely different view and held that: "[p]roperty of public service corporations is constituted and recognized at least implicitly, if not also explicitly, as a distinct class for taxation purposes." (p. 1037). Relief was denied.

3. Resort to Classification Schemes to Perpetuate Discrimination

There is yet another factor which is a cause of the inadequacy of relief from discrimination by pipelines on the state level. As has been pointed out, state administrative bodies and judicial bodies are bound by their state law and constitution. Even in those instances where pipelines and other utilities receive equalization relief from discriminatory taxation, an easy legislative response is to adopt classification schemes to perpetuate the discrimination. The States of Tennessee and Arizona, in the field of railroad taxation, provide examples of this phenomenon. In Southern Pacific Company v. Cochise County, 92 Ariz. 395, 377 P.2d 770 (1963), the Arizona Supreme Court held that the state's de facto property classification system whereby railroad property was assessed at 89% of full cash value rather than the 20% figure applied to all other property violated the Arizona constitutional requirement for uniformity of taxes. However, the court held that its ruling would be prospective in nature, thus allowing the state to adopt a new de jure property classification system, which it in fact did. Four categories of property were created according to use, and utilities were placed in the category receiving the highest rate of assessment. Despite the fact of the heavier burden carried by the utilities under this system, it passed constitutional muster in Apache County v. Atchison, Topeka & Santa Fe Railroad Company, 106 Ariz. 356, 476 P.2d 657 (1970), appeal dismissed, 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed. 2d 542 (1971).

Similarly, in the State of Tennessee, a Tennessee appellate court was critical of the higher de facto level of assessment of railroad property as compared to other commerical and industrial property. However, the relief granted by the court of appeals was purely prospective. See Southern Railway v. Clement, 57 Tenn. App. 54, 415 S.W.2d 146 (1966). The state legislature responded by proposing and securing the passage of an amendment to the state constitution, which provided a de jure level of classification, thus allowing a higher assessment level for public utility property; 55% for public utilities, 40% for commercial and industrial realty, and 30% for commercial and industrial personalty. This classification system then withstood scrutiny in the state courts (See Snow v. City of Memphis, 527 S.W.2d 55 (1975)), although it was later successfully challenged by railroads in federal court under Section 306.

Efforts by pipelines to attack state property tax classification schemes have failed. In Alabama, utility property, including pipeline property, is classified as class one property, and is by law assessed at a higher percentage of its fair market value than other commerical and industrial property (class two property). Colonial Pipeline Company brought an action in Alabama courts challenging the validity of the property tax classification scheme. The trial court held that the taxation of utility property at a higher assessment level violated both federal and state constitutions. The Alabama Court of Appeals, however, ruled that classification of property for tax purposes is within the broad powers of the legislature, and is presumed valid under the Alabama state constitution. Furthermore, the classification passed federal constitutional muster because there was at least a "rational basis" for the discriminatory effect of the tax. The Alabama Court of Appeals did note that federal law now prohibits such discrimination against railroads, airlines and trucking companies, but that in absence of federal legislation, such discrimination was permissible against pipelines. The Court said:

> "Were it not for the supremacy of federal statutes over state law, airlines, trucklines and railroads . . . would be subject to the same Class I classification as is assigned Colonial's property. The preemption for tax purposes of

> those other entities does not destroy the classification by state law from which they were exempted and to which Colonial continues to belong."

State of Alabama v. Colonial Pipeline Co., Civ. 3824 (Alabama Court of Civil Appeals, filed January 25, 1984) p. 10.

4. Requirement of a Multiplicity of Suits

The pipelines, as do other interstate carriers, face another administrative problem when seeking tax relief. Pipelines may cross through several counties in a state, but state law sometimes requires a pipeline to file for relief in each of the counties in which it operates. As the Senate Subcommittee found in relation to railroad taxation, this means that a suit must be brought in every county of the state in which the pipeline operates, "a time-consuming procedure quite the opposite of a plain, speedy, and efficient remedy." *See* S. Rpt. No. 91-630, p. 7. Even in some states, such as North Carolina, where pipelines are "centrally assessed," state law only provides for equalization relief on a county-by-county basis, thereby necessitating a multiplicity of suits each year in which equalization is sought. It is expressly provided by statute in North Carolina that a pipeline or other public service company seeking relief from *de facto* discrimination must petition the county board of commissioners in each county which relief is sought. *General Statutes of North Carolina*, § 150-342(c).

By contrast, after adoption by Congress of Section 306, North Carolina railroads were able to obtain relief from *de facto* discrimination in all counties in North Carolina in which they

operated in a single action brought in federal court. Clinchfield R.R. Co. v Lynch, 527 F.Supp. 784 (E.D.N.C. 1981), aff'd. 700 F.2d. 126 (4th Cir. 1983).

The approach Congress has taken in relation to discriminatory taxation of railroads, as embodied in Section 306, alleviates the very real problem of a multiplicity of lawsuits. Similar federal procedure is desirable for the pipelines as well. Under the proposed legislation, as under Section 306, a pipeline would bring one lawsuit against the state assessing authority, usually the state department of revenue, rather than in each individual county in which the pipeline owns property.

5. Conclusion

The availability of a federal remedy tends to deter rather than to encourage litigation of tax matters which may interrupt the orderly process of the assessment and collection of taxes. As has been repeatedly proven by railroad tax litigation under Section 306, a firm commitment by Congress to eliminate discriminatory state taxation of interstate carriers, coupled with the grant of authority to the federal judiciary to effectuate the act's prohibitions, discourages the states from adopting illusory practices and statutory schemes which have in the past and continue today to belie the asserted commitment of the states to provide tax equity for all taxpayers.

The following observation from S. Rpt. No. 91-630 is as pertinent today as it was when written:

> Unfortunately interstate carriers, especially railroads, are easy prey for state and local tax assessors. Railroads, oil pipelines, and other interstate carriers are non-voting, often non-resident, targets for local taxation, and cannot easily remove their right-of-way and terminals.

S. Rpt. No. 91-630, P. 3.

Experience has proven, and Congress has already found in the areas of taxation of other interstate carriers, that for legal, practical, and political reasons, interstate carriers do not receive relief from discriminatory state taxation under state law. Pipeline assessment practices, in the absence of federal law, are identical in most states to railroad assessment practices with respect to both *de facto* and *de jure* discrimination. Pipelines, like railroads, must therefore have access to federal courts to obtain relief from state tax discrimination, and legislation by Congress to prohibit tax discrimination must contain an exception to 28 U.S.C. § 1341 in order to be effective. Recent proceedings before state administrative and judicial tribunals prove this to be the case.

April 30, 1985

Mr. ANDERSON. Please proceed.

TESTIMONY OF MARLOW W. COOK, PARTNER, BISHOP, LIBERMAN, COOK, PURCELL & REYNOLDS; ROBERT W. BAILEY, MANAGER, PROPERTY TAXES, TENNECO, INC., TENNESSEE GAS PIPELINE CO.; AND JAMES W. McBRIDE, LAUGHLIN, HALLE, GIBSON & McBRIDE.

Mr. COOK. Mr. Chairman, thank you very much.

The problem in this, Mr. Chairman, was that in 1948 the United States Code was amended by 28 USC 1341 to limit the use of the Federal district courts for suits for injunctive relief for property owners against State taxing agencies.

Basically, this was done to protect the States' ability to collect general revenue for the orderly operation of State and county business. However, where interstate commerce is affected by discriminatory and burdensome tax assessment, an exception should be made to permit an opportunity to prove discrimination in the Federal district courts.

As was stated in Congressman Edgar's opening remarks, all of this has been taken care of in various industries. For instance, the railroad industry sought and received relief in the Railroad Revitalization and Regulatory Reform Act of 1976. That was the 4-R act. It is Public Law 94-210.

The Tax Equity and Fiscal Responsibility Act of 1982, which is Public Law 97-248, protected airlines in discriminatory tax.

The trucking industry was granted relief in the Motor Carrier Act of 1980, which was Public Law 96-296. Also, the bus companies have been taken care of.

I am going to digress a little bit because you have my statement. What we really have here, Mr. Chairman, in our discussions with various Members of the Senate and the Congress we have this situation thrown at us—that this really is a States' rights issue and that we are violating States' rights to the extent that we are saying to them that we would like Federal relief in Federal court to determine the improper assessment ratios that are imposed on pipelines in interstate commerce as opposed to pipelines in intrastate commerce and other industrial properties within the States.

Some of these divergencies amount to many, many millions of dollars for those States on a yearly basis, and the total I think nationally now is somewhere in the vicinity of $200 million.

Let me give you some examples really from my standpoint that it does not violate States' rights because we are not asking by this relief for any taxes to be lowered at all. If a State wants to raise everybody else's assessed valuation up to where the pipelines are, then they probably will receive more money. If they want to have uniform evaluation for the purpose of their tax rates, then we are perfectly happy with that regardless of the revenue that it produces.

You will recall that in 1981 we all wrestled with the case of Maryland versus Louisiana. Louisiana attempted to impose a 4-percent tax rate on gas flowing through Louisiana wherever it ended up. In effect, what was going to happen was that if the gas was going to end up in the consumers in Pennsylvania, they paid that tax because the 4 percent went in the base rate and the rate reflected an increase in the cost of gas to the ultimate consumer. This was all in interstate. They did not include intrastate gas. The Supreme Court threw it out because it was not uniform.

All we are saying is that we even follow the principle in the case of Edison versus Montana. Edison attempted to attack the severence tax on coal in Montana because it was so large and it was so discriminatory. The Supreme Court said no dice, because the tax is uniform. That severence tax, regardless of how high it is, applies to a ton of coal sold in Montana as well as a ton of coal sold in California or anywhere else. Therefore, uniformity prevailed.

This is what we seek here. This does not give relief to anybody but the consumer, Mr. Chairman, because the gas industry is totally regulated by FERC. If we are granted this, we must go into Federal court—and, by the way, we are having no luck in State courts at all, and these gentlemen will let you know that. We are just not winning any cases in State courts at all.

We come out of the administrative agencies in States on very narrow issues going into the court system. We wind up behind the 8-ball in the State courts, and we have no recourse.

The Federal statutue that was enacted in 1948 prescribes that if there is a speedy, efficient remedy in State court, the Federal courts are not eligible to the utility industry in regard to taxes. That is the position we are in, and that is the relief that we are really asking for.

Whatever relief is granted as a result of this amendment—and, by the way, Mr. Chairman, the State of California has uniformity in all types of property; the State of Pennsylvania has uniformity in all types of property. The majority of States has uniformity in all. Texas does; North Carolina does. There is no problem in that given situation.

However, what we are saying is that we want to have the right as an industry to go into Federal court to attack these discriminatory rates against interstate pipelines because, frankly, Mr. Chairman, it has become a new source of revenue for States that do not want to face the burden of taxing their own taxpayers, and they wish to pass it on to the end of the line. That, in our view, is a situation that is as much a value of States' rights to California and to Pennsylvania as it is to those who say that they have the right to discriminate against interstate pipelines as against intrastate pipelines or other industries in interstate commerce under the Commerce Act.

Mr. **Anderson**. Very good.

Mr. Bailey.

Mr. **Bailey**. Mr. Chairman, I am Robert W. Bailey, speaking on behalf of a coalition of 19 federally regulated interstate gas pipeline companies. I am a manager of taxes for Tenneco, Inc., Tennessee Gas Pipeline Co. Division, having worked in property taxes for the past 18 years.

Included in this statement is a schedule for the record showing the estimated effect this proposed legislation would have in those States utilizing a discriminatory form of classification for ad valorem tax purposes. The tax data used in this schedule was extracted from the Federal Energy Regulatory Commission form 2, which is the annual report of natural gas companies, for the year ended December 31, 1983 for each of the more than 100 gas pipeline companies under Federal regulation.

The schedule reflects an estimate of the adjustment to our industry's tax burden in those several States which presently discriminate against interstate natural gas pipeline companies when compared to other commercial and industrial taxpayers.

In Alabama, for example, utilities are assessed at 30 percent of fair market value; all property not otherwise classified at 20 percent and agricultural, forests, and residential property at 10 percent.

Consequently, gas pipelines are assessed by statute 50 percent greater than other commercial and industrial properties and 200 percent greater than farm and residential properties.

Generally, statutes of most States require that all property be valued equally and uniformly on the basis of fair market value. However, this law is rarely enforced. In practice, only State-assessed pipelines and other public utilities are revalued annually at full fair market value. Locally-assessed properties are revalued infrequently, which results in annual assessments on these properties which are only a fraction of the fair market value required by law.

I am personally aware of a Mississippi county in which the local real estate had not been revalued for more than 25 years prior to 1984 when the State mandated a statewide reappraisal.

I would like to call your attention to some recent cases or examples of discrimination which exist with respect to State assessment on natural gas pipelines.

In 1983 the State of Ohio passed legislation reducing the personal property assessment rate. Essentially, the rate on qualifying property was dropped from 35 percent to 25 percent in increments of 1 percent per year. For purposes of this reduction, all qualifying property was assumed to be subject to an assessment rate of 35 percent at the outset regardless of the rate at which the property was actually assessed for the preceding year.

While airlines, railroads, and trucks received the benefit of new Federal legislation, along with commercial-industrial property, natural gas pipelines did not and continued to be assessed at 100 percent in the State of Ohio.

A recent decision of the Oklahoma Supreme Court with respect to ad valorem assessments represents another example of discrimination against certain types of public utility property including natural gas pipelines. The court had recently held that a system which does not equalize ad valorem assessments throughout the State is unfair and invidiously discriminatory, and that the Oklahoma legislature manifestly intends to equalize ad valorem assessments so that every parcel and item of taxable property in the State would be assessed at the same percentage of its value.

The court implemented this decision in two related cases. In the first case the court rejected variances between 8 percent and 18 percent as being inequitable. In the second decision the court determined that for 1982 a 12-percent ratio with permissible intercounty deviations of 3 percent above and below the mean would apply to all property in the State subject to ad valorem taxes.

As a result of these decisions, most public utilities joined to seek equalization before the Oklahoma Supreme Court. The court ruled, however, that equalization decisions did not apply to public utilities. It applies to everyone but public utilities.

As I have previously mentioned, in Alabama utility property, including pipelines, is assessed by statute 50 percent greater than other commercial-industrial properties and 200 percent greater than farm and residential properties.

In recent case a taxpayer contended that its pipeline should not have been classified as a utility property since, one, Alabama's statutory definition of utility property was overly broad and violated the equal protection clauses of the United States and the Alabama constitutions; and, two, the statutory definition for property tax purposes was inconsistent with that used for the purposes of Alabama's gross receipts tax.

Both of these arguments were rejected by the Alabama court of appeals, which concluded that it was reasonable to classify pipelines as public utilities for ad valorem tax purposes and that the definitional terms of Alabama's property tax statutes were sufficient to accomplish this result.

The court observed that, had Congress not specifically forbidden the States to tax property of railroads, airlines, and motor carriers at a higher level of assessment than that which was applicable to pipelines, then such property would be subject to the same classification applicable to the taxpayers.

These are examples of the discrimination in the assessment of natural gas pipeline properties when compared to the assessment of property of other taxpayers.

The vast majority of States essentially assess pipelines and other public utilities at the State level by an agency such as the State tax commission or the department of revenue. They have the responsibility of annually assessing all the property of public utilities within that State and then distributing these assessed values to the local taxing jurisdictions where the property is actually physically located.

Our pipeline properties are assessed by the same State administrator in the same manner as that of the railroads. We are asking Congress to grant interstate natural gas pipelines the same right for fair and equitable assessments of our properties as has previously been granted by Congress to the railroads, motor carriers, buses, and airlines.

Since passage of the 4-R act, many State administrators have asked us, when are the pipelines going to obtain their 4-R type of legislation; the railroads deserve it and certainly the pipelines do, also. Passage of this legislation would not come as a surprise or shock to these officials.

My purpose in coming here today is to point out this existing unfair practice that relates to natural gas pipelines and to urge Congress to take the necessary action to correct this discrimination. The law should be amended to allow our gas pipeline companies access to Federal district courts so that relief from excessive property taxes could be sought in most States which discriminate. Because these taxes are included in the rate base, the higher property tax assessment by some States results in higher costs to the ultimate consumer, often in States beyond the assessing jurisdiction. Thus, consumers in one State must pay for the higher rate of tax assessed by another State.

These taxes are authorized by the Federal Energy Regulatory Commission to be included in the rate base of gas. Actually, they are included as part of the cost of service which determines the total cost that the consumer pays. Any reduction in taxes would be required to be passed through to the consumer as well, resulting in a lower price for consumers. The only benefit to the industry is the satisfaction of participating in an effort to halt the rising price of our product.

Mr. Chairman, I referred to a schedule which is attached to my statement. It might be a good idea for me to review that for you now.

Mr. **Anderson**. We are going to be asking you questions on that.

Mr. **Bailey**. OK. That is fine, if you would like to do it that way.

Mr. **Anderson**. Mr. McBride.

Mr. **McBride**. Thank you, Mr. Chairman.

My name is James McBride. I am engaged in the private practice of law here in Washington, DC. Much of my practice over the last 10 years has been devoted to State tax discrimination litigation. For that reason, I have been asked to give testimony before the subcommittee today as to the reasons why a Federal remedy or Federal court jurisdiction is absolutely necessary if Congress is going to grant protection to the pipelines from State tax discrimination.

Access to Federal courts, even where Federal questions are involved, is effectively barred by section 1341 of the Federal Code. Therefore, pipelines have to litigate all State tax questions in State courts. Historically and at present, pipelines and public utilities simply have been unable to obtain effective relief from State tax discrimination in State tribunals. That is essentially for four reasons.

First, pipelines are required almost uniformly to try their ad valorem tax cases before State administrative agencies. In many instances, those State administrative agencies are the very same people who proposed and put the assessments on in the first place.

Second, many of those administrative agencies can impose very high and onerous burdens of proof with respect to public utility property, requiring essentially that the pipeline prove that the assessment is arbitrary and capricious. I have made reference in my prepared statement to the State of Iowa which requires pipelines to prove that the assessor was arbitrary and capricious in placing that assessment on their property. This is so, notwithstanding the fact that other taxpayers, the vast majority of them in the State, such as the General Motors and the Sears, those people who are locally assessed, merely have to prove by a preponderance of the evidence that their assessments are excessive.

Reason No. 2 is that, while pipelines can appeal those administrative agency determinations to the State court, the State courts almost universally are limited in the scope of review that they can apply. So long as the administrative agency determination is supported by any substantial or material evidence, then relief must not be granted.

In addition to that, as Mr. Bailey has made reference to, some State courts, notwithstanding uniformity provisions in the State constitutions, have nevertheless held that it is perfectly permissible to treat pipelines and other public utilities differently than locally-assessed taxpayers.

Reason No. 3, occasionally a pipeline or a railroad or other utility would get relief in State court. Almost categorically that would be prospective only and did not apply to any of the taxes that had already been paid.

But, more importantly, in many States, once that relief had been determined and had been found to exist, once the discrimination had been found to exist, State constitutions were amended actually sanctioning the discrimination which had been found to exist previously, and I have cited examples in Tennessee and Arizona in our prepared paper.

A fourth reason why Federal court access is important is that, in many jurisdictions, pipelines are required to challenge their assessments on a county-by-county basis. If, for example, a pipeline would run through 15 or 20 counties in a given jurisdiction, it would be required to have 15 or 20 different actions to challenge its assessments in that State. Under Federal legislation, such as the railroad legislation, a railroad would be able to challenge in a single Federal court action discrimination for all the counties in a given State.

Experience has proven, and Congress has already found in the areas of taxation of other interstate carriers, that for legal, practical, and political reasons, interstate carriers do not receive relief from discriminatory State taxation.

Pipeline assessment practices in the absence of Federal law are identical in most States to railroad assessment practices with respect to both de jure and de facto discrimination. Pipelines, like railroads, must, therefore, have access to Federal courts to obtain relief from State tax discrimination.

Thank you, Mr. Chairman.

Mr. ANDERSON. Thank you, gentlemen.

It is going to be a rough day. I am told there are going to be a lot of votes on the floor today.

First, I have a clarifying question of both Mr. Cook and Mr. Bailey. Both of you gentlemen referred to representing coalitions of pipeline companies. Are these coalitions in fact both the same?

Mr. COOK. There are 26 pipeline companies and we represent a coalition. They are all gas pipelines.

Mr. ANDERSON. So both of you, then, represent the same——

Mr. BAILEY. We are representing the same, yes, sir.

Mr. COOK. Yes, indeed.

Mr. BAILEY. Actually, at this stage there are 19 companies that are involved in this.

Mr. COOK. That's correct.

Mr. ANDERSON. Do either of you know and, if so, would you advise us of the positions of the pipeline companies that are not members of the coalition you represent?

Mr. BAILEY. I think that all companies that we contacted certainly support our efforts to obtain this legislation, Mr. Chairman. It is a matter of some not being able to financially support us. What I meant by the coalition of 19 is that we have 19 different companies which are financially supporting our efforts to obtain this legislation.

Mr. ANDERSON. My next question is for Senator Cook.

My plan, hopefully, is to run over to the floor and vote and then come back and keep doing this. We are almost through here.

Mr. COOK. Sure; absolutely.

Mr. ANDERSON. Senator, can you give us any reason why certain States tax natural gas pipelines at a higher rate than other commercial property?

Mr. COOK. Because it is a tax that can be passed on to another jurisdiction, Mr. Chairman. To give you an example, we have one State that has a present homestead exemption of $75,000 per residence. That means that basically there is almost no property tax in that State at all. There is presently a bill pending in the State legislature that would give a homestead exemption to the full assessed value of the private property, of any individual who owns property in that State. Therefore, they have to find a source to politically cover the loss of that revenue.

What we are really seeing is that we are seeing States that are finding taxes that they can pass on, and they can pass on to the ultimate consumer. For instance, in this State, that issue will go to the people. They are going to vote not to pay any property taxes, but that State is going to find a source by which that can be made up.

The problem we are now looking at is that they are passing it on to the consumers in Kentucky, the consumers in Pennsylvania, Maryland, or wherever the case may be, that are at the end of the pipeline. They are the people who are going to make up that loss. They have no choice to make a decision as to whether they will pay that tax or not.

Mr. ANDERSON. Can you tell us if the pertinent States earmark those tax revenues for any special purposes?

Mr. COOK. Not to my knowledge. I think they are all general revenue. They are all general revenue.

Mr. ANDERSON. Would you construe the language of the amendment as prohibiting a State from imposing user fees upon pipelines to cover the cost or part of the cost for the safety or other types of regulations of those pipelines?

Mr. COOK. No; I would not, but I would consider that the amendment, if it were discriminatory, could be a basis for which the pipeline could seek a remedy in Federal court as opposed to State court.

Mr. ANDERSON. This will be for Mr. Bailey.

Mr. Bailey, would you please refer to the attachment to your statement. Apparently eight States—namely, Alabama, Arizona, Louisiana, Minnesota, Mississippi, Montana, Ohio, and Tennesse—have statutes that assessment pipeline property at a rate higher than other commercial property; is that correct?

Mr. BAILEY. That is correct, sir.

Mr. ANDERSON. Is it also correct to say that six States—namely, Arkansas, Iowa, Kansas, Nebraska, New Mexico, and Oklahoma—engage in practices that result in higher taxes being levied on pipeline property as compared to other commercial property?

Mr. **Bailey**. Yes, sir.

Mr. **Anderson**. For the purposes of the record, would you please explain to the subcommittee the remainder of the attachment?

Mr. **Bailey**. The remainder of the attachment? What we have done is to list all the States and then show the taxes, in column B we show the taxes that are collected. They are shown for the 1983 tax year for each of the States.

Column C, we show the level of assessment for the pipeline industry.

Column D shows the level of assessment. These are the States that have classification, either legal or de facto.

Column D shows the level of assessment for other commerical and industrial properties of taxpayers.

Column E shows the amount of taxes that the pipeline industry would have paid had they been at the same level as other commercial and industrial taxpayers.

Column F is simply the difference between column B and column E.

Mr. **Anderson**. Thank you.

At this stage I am going to have to go vote, so we will recess for approximately 10 minutes.

[Recess taken.]

Mr. **Anderson**. The meeting of the subcommittee will come to order.

We hope to get some more questions answered before there is another vote.

I was on Mr. Bailey's time, and my next question is: Mr. Bailey, have any of the 14 States been approached by the industry for the purpose of changing their statutes or their practices so as to eliminate discrimination against the pipeline industry and, if so, what was the response?

Mr. **Bailey**. I don't know that I could say that we have gone directly before each of these States requesting that they reduce their levels to a commercial and industrial level that we are seeking. However, I can tell you that would get a negative response if we did, very definitely.

Mr. **Anderson**. For the record, Mr. Bailey, would you describe—and, incidentally, when I ask you questions, if one of the others wants to correct or ad lib, then go ahead—Mr. Bailey, for the record would you describe how the Federal Energy Regulatory Commission treats State taxes for rate purposes?

Mr. **Bailey**. That is part of your cost of service that goes into the buildup of your overall cost of your natural gas that the consumer pays.

Mr. **Anderson**. Can you give any estimates on how much the average consumer would save on an annual basis if alleged State discriminatory taxes are eliminated?

Mr. **Bailey**. On an annual basis? I do not have that figure.

Mr. **Anderson**. In other words, is it large or is it small? It is kind of hard to identify.

Mr. **Cook**. Mr. Chairman, let me interject here because probably at the present level it is going to be pretty insignificant, but the example that we are concerned about is that we are watching more and more States that are getting involved in a differential. To the extent that this is kind of creeping new source of revenue for States that do not wish to impose additional taxes on their own people, we find that it is a tax that can really get out of hand.

Really there is a member of this committee who is in a position of his State—the differential is $15.5 million. It is a State that almost produces no gas at all, Mr. Chairman, negligible amount of gas, but yet the pipelines that flow through that State—it is Iowa; that is correct, Mr. Chairman.

Now if you take the same system in the States all along the line and the next State decides that that was a good source of revenue because that State, Iowa, utilized it and the next State and the next State, and the pipeline finally ends, let's say, in Minnesota or up in Wisconsin or even in Michigan. Ultimately, their gas bills could double without any increase in the product itself but merely as a matter of discrimination on natural gas pipelines as they run through States.

In other words, it is a leap frog situation. You can get to the point where if this becomes a good source of revenue within the political system, because you don't want to impose a new tax on your own people—well, I will give the case of Louisiana.

Louisiana proposed in a constitution to be submitted to the people that these rates be raised higher than they are now and that the discriminatory basis be different, and that other taxes within the State be reduced.

For instance, intrastate pipelines would get a benefit on its corporate income tax. This was an attempt to get around Maryland versus Louisiana. They would tax intrastate and interstate pipelines at the same level, but the intrastate pipelines would have a big reduction in corporate taxes. Now if you are going to submit that to the people of Louisiana to vote for it, to increase taxes, and people outside of Lousiana are going to pay those taxes, everybody in Louisiana is going to vote for it. But the fellow who ultimately is going to pay the tax, the consumer in Pennsylvania or the consumer in Kentucky, Tennessee, Maryland, all the way up the line, he is not going to participate in that system, Mr. Chairman. That is the real problem.

Mr. ANDERSON. Should the Congress pass this legislation, how can it be sure that any savings realized through the reduction of taxes will inure to the benefit of consumers of natural gas? In other words, would you support legislative language that would assure that this would happen?

Mr. COOK. Oh, I would. I don't think there would be any problem in that.

As a matter of fact, the legislative language, Mr. Chairman, we believe is already there. The only thing that this would give us is the right to go into Federal court to get uniform assessment on all properties. When that is determined and the value of the savings, for instance, in pipeline *x* or *y* is determined, FERC will notify the pipeline that it is eligible for a rate hearing case based on the fact that it has had a reduction in its assessment.

Rate cases are originated two ways. They are either originated by the pipeline themselves because they are asking for a rate increase because of cost increases, whether they be taxes or whether they be cost of gas, or it can be implemented by FERC itself, who realizes that there has been a reduction in overall cost and, therefore, that a saving can be passed on to the consumer.

Mr. BAILEY. That's good, yes.

Mr. ANDERSON. My next questions are for Mr. McBride.

Mr. McBride, the proposal contained in S. 2932, which was introduced in the last Congress, contains the following language:

> No State, subdivision of the State, or authority acting for a State or a subdivision thereof may (4) impose another tax that discriminates against the natural gas companies, subject to the jurisdiction of the Commission.

The Commission is the Federal Energy Regulatory Commission. How would you define natural gas company?

Mr. McBRIDE. I would want to go back to Mr. Bailey and let him define natural gas company because I think that is more in his area of expertise.

Mr. ANDERSON. Let me ask the second part: Could you tell us what type of taxes would be included within the term of "another tax"?

Mr. BAILEY. Well, Mr. Chairman, that "another tax" provision is designed for a number of things. First of all, and I guess foremost, it is designed to prevent a State or subdivision, once relief has initially been obtained, from coming back and posing some other type of tax which would, in effect, recoup those taxes which had been declared discriminatory.

In addition, those would apply solely to taxes which single out the natural gas carrier for treatment separate and apart from other taxpayers in general in the State.

Under the railroad legislation, which has a provision very similar to that, it was held discriminatory for the State of Iowa, for example, to impose a diesel fuel tax on railroad companies solely for the purpose of operating railroad locomotives in the State when nobody else had to pay that tax. That is the only other type of tax that would really be covered by that.

Any tax——

Mr. ANDERSON. It sounds rather broad to me.

Mr. McBRIDE. Any tax which is uniformly applied to other taxpayers can be applied to the pipeline. For example, all businesses do not pay a corporate franchise tax because they don't operate in a corporate setting, but since all corporations would pay that, the pipelines and the railroads would have to pay those taxes because everybody who is similarly situated pays those taxes.

It is really not that broad at all. It is simply meant to prevent a State from singling out a carrier for treatment separate and apart from what other taxpayers in the State are required to pay. Its principal function is to prevent them from coming in and recouping through the addition of some other tax, an excise tax, a gross receipts tax, which other people do not pay, the funds which have been received as a result of discrimination under the first three provisions of the act.

Mr. ANDERSON. Mr. Bailey, do you feel that "the natural gas company," that that definition is enough or that that needs to be tightened up? In a sense, it imposes another tax that discriminates against a natural gas company. My concern is, just what is a natural gas company in your mind?

Mr. Bailey. In my mind a natural gas company would be one that either transports or distributes gas.

Mr. McBride. Mr. Chairman, let me say I think it is the clear intent that that would apply principally to people who were owners of natural gas transmission property, the same people who owned that property which is covered under the first three provisions. That is certainly the intent, I believe.

Mr. Anderson. Could it get to a tax on the sale of the gas?

Mr. McBride. I don't believe so, unless there was some way that tax was structured to apply to the natural gas carrier and not to anyone else, to single them out.

Mr. Anderson. Another one for Mr. McBride: S. 2932, in there, it says: "Minerals and public utility properties are excluded from the definition of commercial and industrial property." Those exclusions were not made in that particular definition in the laws that apply to railroads, buses, trucks, or airlines. Why was it done in S. 2932?

Mr. McBride. As a practical matter, Mr. Chairman, one must have a common denominator for determining whether or not discrimination exists. As a practical matter, for de facto discrimination purposes, that common denominator is fair market value, and it is fair market value which is determined on the basis of a sales assessment ratio study which basically samples sold properties. It has created a great deal of difficulty because there is no way to determine, with respect to most mineral property and with respect to all public utility property, at exactly what level of assessment that property is assessed.

Additionally, mineral property in many jurisdictions, particularly western States, even though they are nominally ad valorem taxes, they are based on net and gross proceeds. So they bear no relationship to the ad valorem value type situation that we are talking about with respect to the assessment of public utility property or pipeline property.

Nevertheless, there have been problems in attempting to take the net and gross proceeds of mineral property and say it is taxed at 100 percent. There is no way to prove that. Quite frankly, it is simply not comparable.

Therefore, it was felt that those things should be carved out so that we could have a basic common denominator that can be measured by the sales assessment ratio study for determining whether or not discrimination exists.

Mr. Anderson. Mr. Shuster.

Mr. Shuster. No questions, Mr. Chairman.

Mr. Anderson. I am afraid to ask Mr. Edgar. [Laughter.]

Mr. Edgar. Mr. Chairman, you should not fear on this subject because every time we talk about natural gas pipeline issues, my eyes glass up and become very blurry, but I do have a couple of questions I would like to ask.

You have already answered this question in part, but let me ask it just one more time, just so we are really clear. How can we be assured that this reduction in taxes paid by the pipeline companies will be passed on to the consumer?

Mr. Bailey. That is taken care of, Mr. Edgar, through the regulatory process at FERC when you file a rate application.

Mr. Edgar. And you support this process?

Mr. BAILEY. Yes.

Mr. COOK. I think there is one caveat to that, Mr. Edgar. That is that FERC can originate an action on its own as the result of winning a particular lawsuit or acquiring a uniformity in a given State that reflects a major amount of money. FERC can notify the respective pipelines in that State that they are going to be subject to a rate evaluation by reason of the fact that there has been a reduction in the cost of doing business as a result of having interstate pipelines through that State.

Let me give you an example. For instance, when the Congress passed the tax reduction and the corporate tax rates went from 48 percent to 46 percent, it was a field day for State agencies in the business who immediately said that your tax deferral accounts, you've got too much money in, because your corporate tax rate, your Federal corporate tax rate, has gone down. Consequently, they initiated immediate hearings, Mr. Edgar, to reduce the cost to the consumer. They gave them—oh, some of them gave them—as little as 2 years to immediately reduce their rates to reflect the fact that in their tax deferral accounts they had too much money, and, therefore, they ought to come down.

It is almost an immediate process.

Mr. EDGAR. If the pipeline companies do not realize any increased income as a result of the tax reduction, why are they seeking this legislation?

Mr. COOK. Well, they can answer this particularly right here, but let me give you a good example.

You are getting at the point where competitive pricing in the business is within millage of, let's say, liquid fuels, coal. When you get to the people who we refer to as penny-changers—and those are big industrial users. Let's say industrial users, particularly in Pennsylvania. Let's take New Jersey, and so on, who are at the end of the line. If they can see that they convert the coal or that they can convert the liquids right away quickly as a result of millage changes and an increase in the cost of gas, and they can be cut off of the gas, and the industry loses a major industrial client, then the cost of that gas is immediately passed on to the consumer, so that his prices can really skyrocket, and/or we just plain ordinary lose the business, but we have to pick up the difference and the consumer is the one that picks up the difference.

It is really a competitive matter. The more you increase these things on the natural gas industry and you make us less competitive with liquids, you make us less competitive with coal, and we lose customers, then the cost of that goes on to the consumer.

Mr. EDGAR. Mr. Bailey, do you have any comment on that?

Mr. BAILEY. I ~~would~~ agree with that entirely. We are in a very competitive industry at this stage. Ten years ago, we did not have these problems, but the price has escalated steadily over that period of time. The price of competing fuels has come down to where we are very close, and it is an extremely competitive situation.

Mr. EDGAR. Let's assume that pipelines do obtain the authority to seek redress in Federal courts and there will be a reduction in tax revenues paid by the pipelines to the States. Do you have any indication as to how the States will recover this lost revenue?

Mr. **Bailey**. In my opinion, most States have the ability to redistribute these taxes. I don't think they would have a tax loss. The tax differential would be redistributed to other taxpayers.

Mr. **Edgar**. So you are not concerned about Ohio and——

Mr. **Bailey**. It is the same thing as——

Mr. **Edgar** [continuing]. Iowa, and those States?

Mr. **Bailey** [continuing]. What occurred when the railroads obtained their Federal legislation and their taxes were reduced. The pipelines picked up a good portion of that, I think.

Mr. **Cook**. Mr. Edgar, I can only say to you that, if you look at these as they now exist—and we just don't want them to balloon and explode—but if you look at them right now, the millage rate could be changed in any State almost insignificantly to make up the difference. It just would almost be nonexistent as far as the taxpayer is concerned. It would be one of those things where you brag about the fact that your rate has gone down, but then when you get your bill you find your assessment has gone up. It is kind of one of those things that would almost be insignificant.

Mr. **Edgar**. I appreciate the testimony.

I have no further questions, Mr. Chairman.

Mr. **Anderson**. Any more?

[No response.]

Mr. **Anderson**. Thank you very much, Mr. Cook, Mr. Bailey, Mr. McBride, for an excellent presentation.

Mr. **Cook**. Thank you.

Mr. **Bailey**. Thank you.

Mr. **McBride**. Thank you.

Mr. **Anderson**. At this time the subcommittee stands adjourne.

[Whereupon, at 12:44 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

ADDITIONS TO THE RECORD

STATEMENT OF THE
AMERICAN GAS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
ON THE REAUTHORIZATION OF THE
NATURAL GAS PIPELINE SAFETY ACT OF 1968, AS AMENDED

APRIL 30, 1985

The American Gas Association (A.G.A.) is a national trade association composed of nearly 300 natural gas distribution, interstate, and intrastate transmission companies in all 50 States. Collectively, A.G.A. member companies account for about 85 percent of the nation's total annual gas utility sales.

A.G.A. is pleased to present its views on legislation to reauthorize the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended. As the members of this Subcommittee know, the present law authorizes the operation of the safety program for the transportation of natural gas. It also administers the grant-in-aid program for States that assist the Materials Transportation Bureau (MTB) in the enforcement of the NGPSA. A.G.A.'s position on NGPSA reauthorization is clear: reauthorization of the present law would permit continued enforcement of the NGPSA, which has in the past provided maiximum public safety at a reasonable cost to the public.

A.G.A. understands that the Subcommittee is looking at various proposals for revamping the natural gas pipeline safety program. A.G.A.'s views on this matter focus on the following points:

1) The overall effectiveness of the pipeline safety program at the Department of Transporation (DOT).

2) How well the State-Federal effort actually works in practice.

3) The proposed merger of the grants-in-aid programs authorized by the NGPSA and the Hazardous Liquid Pipeline Safety Act.

4) The GAO report entitled Need to Assess Federal Role in Regulating and Enforcing Pipeline Safety, and DOT's response to that report.

5) The concept of "user fees".

A.G.A. respectfully submits that the natural gas pipeline safety program as implemented today effectively serves the original Congressional intent of providing the safest gas pipeline service that is possible within the limits of economic realities.

The Natural Gas Pipeline Safety Program: Adequate and Effective

Under the present regulations, natural gas pipelines are subject to the design, construction, operation, and maintenance safety standards prescribed in Title 49 of th Code of Federal Regulations, Part 192. These regulations are enforced by the MTB under the authority of the NGPSA (4 U.S.C. Section 1671 et. seq.). Part 192 applies adequate safety standards for operation and maintenance of the one million-mile natural gas pipeline system currently in place

The fact that pipelines meticulously conform to the safety requirements of Part 192 is confirmed by A.G.A. data that indicate that the incidence of lost workdays and fatalities of pipeline employees is very low. Furthermore, according to the National Safety Council (NSC), for 1983, accidents which caused days away from work or fatalities in the pipeline transportation industry were 0.92 per 100 full-time employees. This accident rate is lower than for any other transportation industry and compares favorably, for example, with local and suburban transit (7.96 per 100 employees) and trucking (5.78 per 100 employees). The pipeline transportation accident rate is also lower than the total industry average for all other industries reported by the NSC. Those other industries are mining (1.47 per 100 employees); construction (3.88 per 100 employees) manufacturing (1.67 per 100 employees); wholesale and retail trade (1.75 per 100 employees) and services (2.86 per 100 employees).

These figures are evidence of the safety of natural gas transmission and distribution operations. The safety efforts of pipeline operators become even clearer when one considers that 61 percent of all gas pipeline incidents were caused by outside force damage, not by pipeline operations.

The National Transportation Safety Board (NTSB), in its annual analysis of transportation facilities for 1983, found that fatalities involving gas pipeline transportation represented only a miniscule percentage of those involved in virtually any other category of transportation. While one fatality is too many, the 10 pipeline accident fatalities are much lower than fatalities suffered annually in the areas of aviation (1,155), marine activies (1,322), railroads (547), and highways (42,500). We believe that the NTSB analysis leads to the inexorable conclusion that pipeline transportation is the safest mode of transportation available.

A.G.A. believes that the excellent safety record of pipeline transporation proves that pipelines are dedicated to providing safe service to the public. Furthermore, this safety record offers prima facie evidence that the current level of regulation of pipeline operations effectively ensures this safe service. Greater regulation would simply burden the industry, with no increase in safety, but with a concomitant increase in the costs to the consumer. The authorization under discussion here should allow MTB and the states to continue to provide the enforcenment authority that has traditionally been effective in providing safe operations.

A.G.A. also believes that adequate testing and inspection requirements are already in place. There are 12 different sections of 49 CFR Part 192 which, including subsection requirements, total 19 specific regulations requiring testing and inspection of pipelines and pipeline facilities at varying, though limited, time intervals. The maximum time interval for all but one of these inspection requirements is at least once each year, but with intervals not exceeding 15 months. Many companies inspect their facilities more frequently. The one exception to the above time requirements is that for "Leakage surveys of the distribution system outside the principal business area (which) must be made as frequently as necessary, but at intervals not exceeding five years" (49 CFR Part 192.723(b)(2)). A.G.A. believes the present inspection requirements are adequate and effective, as the industry's safety record shows. A similar view is supported by the Administrator of the Research and Special Programs Administration (RSPA). In a March 12, 1985 letter to Rep. Phil Sharp, the Administrator remarked on the "good safety record" of the pipeline industry.

A.G.A. supports the Federal-State partnership idea for enhancing safety in the natural gas transportation system. The experience of our members is that the safety program would be workable without the voluntary support and assistance of the State governments. It is important to the success of subsequent safety legislation that the States continue to take a major role in the pipeline safety program, and the Federal Government should: 1) create the proper incentives to keep the States involved in the program; and 2) encourage the States that are not involved to get involved. Only in this way can the gas industry as a whole work under a uniform set of regulations, while allowing States to maintain autonomy in this area.

Merging of Liquid and Gas Pipeline Programs

A.G.A. does not believe that a merger of the regulatory programs for the liquid and gas pipelines would be in the best interests of pipeline safety.

The safety aspects of the two types of pipelines are not the same. For example, in case of leakage, liquid "puddles" out and can be a hazard after the leak is repaired, whereas gas dissipates and ceases to be a problem once repaired. Consequently, the safety precautions that must be followed are different for gas pipelines than for liquid pipelines. Also, environmental considerations that exist with liquid pipelines -- and "clean up" costs to be borne -- do not exist with gas pipelines. Finally, in at least one state, different agencies have jurisdiction over gas and liquid pipelines. If the two safety programs are combined, duplicative and/or conflicting agency efforts may arise.

A.G.A. believes that the MTB should maintain the two regulatory systems apart, rather than lumping them into one regulatory scheme, particularly where no additional funding would be available to assist in the program safety costs of liquid pipelines.

Comments on the GAO Report

A.G.A. appreciates the opportunity to respond briefly to the GAO report on pipeline safety, published on July 10, 1984.

In A.G.A.'s opinion, the GAO report falls short in the following areas:

o The GAO report does not address the objectives of the statute. It makes no effort to demonstrate whether or not pipeline safety has improved. However, the report includes a chart -- not addressed in detail in the report -- which shows that there is a downward trend in pipeline-related injuries and fatalities during the period 1973-1983.

o The GAO criticisms and recommendations do not address the objectives of the various pipeline safety programs. Nowhere in the report does GAO claim that public safety would be enhanced by acting on its criticisms and recommendations.

o A.G.A. disagrees with the statements that DOT has not provided adequate inspection coverage of interstate and intrastate pipeline operators. Administrator Douglass, in her previously mentioned letter, also diagreed with this aspect of the report, and stated that she did not believe the annual inspection requirements mentioned by the GAO are realistic or necessary for pipeline safety. In any event, whether or not inspection coverage is adequate cannot be judged without further in-depth analysis. It seems highly unlikely that an increased level of inspection would reduce accidents significantly, as they are trending downward at the present level of inspection. Also, increased inspection will have no effect on those pipeline accidents that are caused by outside forces, which constitute the majority of pipeline accidents. Further, inspection of an operator who is already a responsible operator is not likely to produce safer practices. However, reallocation of the inspection effort to those operators who demonstrate a need for improvement may reduce accidents. This assumes that the inspector's role includes encouragement of compliance, not merely the discovery of noncompliance. Furthermore, consistently uniform training of inspectors should lead to more consistent application of the pipeline safety regulations. A standard level of education could be developed by the DOT to help assure this consistency, rather than increasing inspection burdens for operators who are already in compliance with the safety regulations.

o The report specifically addresses three unresolved regulatory issues--gathering lines, customer-owned service lines, and master meter installations. Considerable information has been collected on these subjects, and it is still A.G.A.'s position that Federal regulation is inappropriate in these areas. The problems associated with these three segments of the natural gas industry tend to be very location-specific, and are best handled by the appropriate state regulatory body. The best example of this is master meter systems which, in many cases, are inextricably intertwined with local building codes and permit requirements. Apparently, the three issues remain active because they are not currently Federally regulated. A.G.A. believes that there is insufficient evidence to prove that public safety would be enhanced by Federal regulations in these areas. In the absence of justifying evidence, DOT should promote specific legislative exemptions to stop the nonproductive drain of legislative, regulatory, and operator resources toward debating these issues with each change of personnel or with each outside study. This would allow government and industry to spend their resources in more constructive ways that would actually increase pipeline safety.

It should be noted here that the RSPA Administrator's March 12 response to Rep. Phil Sharp states that the GAO audit took place when certain refinements were being made by DOT. Therefore, in these areas, the GAO report is out-of-date.

A.G.A. hopes that these comments on the GAO report will be helpful to the Subcommittee as it examines the issues raised in the report.

User Fees to Finance Pipeline Safety

A.G.A. generally opposes the concept of "user fees". However, it is hard to fully comment when a formal proposal has not been put forth by DOT. We look forward to working with this Subcommittee and DOT when a definite proposal surfaces. On the issue of user fees as a general proposition, the following points should be kept in mind:

o Since pipeline safety benefits all of society, the brunt of the cost should be spread out over all of those who benefit -- who are, in effect, the "users". It should be noted at this point that pipeline operators already expend large sums of money and manpower in efforts to comply with Federal safety regulations. To impose a disproportionate financial burden on the industry to bear more of the cost would be unfair to the industry and the consumers that it serves.

o A user fee charged to the pipeline is actually a tax on the gas consumer, because the consumer will end up paying the fee through higher prices for gas. This higher cost would be especially burdensome on many consumers of natural gas.

o Increased gas costs due to inclusion of "user fees" would work toward putting the natural gas industry at a competitive disadvantage with other forms of enrgy. This would not be good for the industry -- nor would it be good for the fixed customer of a pipeline that cannot switch to other forms of energy, but who would have to bear the increased fixed costs of a pipeline when dual fuel capable customers switch to oil or coal.

State Tax Treatment of Interstate Pipelines

AGA supports the efforts of a coalition of nineteen interstate natural gas pipelines to attach an amendment to the Pipeline Safety Reauthorization measure to prohibit state tax treatment which discriminates against pipelines and their downstream customers. Gas pipelines operating in interstate commerce serve consumers in states far beyond the borders of the taxing state. Since taxes levied on pipelines are authorized by the Federal Energy Regulatory Commission to be included as a "cost of service" to the consumer, those states which impose taxes on interstate pipelines effectively "export" their tax burden to the citizens of other states. Any reduction in taxes would be required to be passed through to the consumers, thus lowering gas prices and benefiting residential users. Furthermore, it would make gas more attractive for industrial users.

Conclusion

For the reasons stated above, A.G.A. respectfully submits that since there is an absence of evidence to the contrary, the present pipeline safety programs have worked very well and the reauthorization of the NGPSA should not include restructuring of the pipeline safety program.

STATEMENT OF
JEROME J. MCGRATH, PRESIDENT
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA
SUBMITTED TO THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION
COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION
UNITED STATES HOUSE OF REPRESENTATIVES
MAY 3, 1985

Mr. Chairman and Members of the Subcommittee:

The Interstate Natural Gas Association of America (INGAA) submits the following comments on the reauthorization and other aspects of the Natural Gas Pipeline Safety Act of 1968. INGAA is a non-profit national trade association representing virtually all of the major interstate natural gas transmission companies operating in the United States. Our companies move natural gas from the producing areas to distributors across the nation who, in turn, sell the gas to the ultimate consumer.

Approximately, 90 percent of the natural gas transported and sold annually in interstate commerce flows through the more than 200,000 miles of pipeline owned and operated by INGAA's member companies. They are subject to the design, construction, operation and maintenance safety standards for natural gas transmission lines prescribed in Title 49 of the Code of Federal Regulations, Part 192 issued by the Secretary of Transportation under authority of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 et seq.)

INGAA believes the Pipeline Safety Act currently provides a more than adequate framework for regulating pipeline safety and, in our opinion, the Department of Transportation has done a satisfactory job of implementing it to date. The safety record of our industry is excellent and generally acknowledged. The National Transportation Safety Board in its most recent annual analysis of transportation fatalities has again found that transportation by pipelines is the safest mode of transportation available (see attachment). We believe that one death is one too many. However, when considering the low incidence of fatalities on the more than one and a half million miles of gas transmission, distribution, gathering and service pipelines in the United States that supply one quarter of our Nation's energy, the conclusion is inescapable that pipelines are indeed the safest mode of transportation. I can assure you we intend to keep it that way.

In addition to satisfying the mandates of the Pipeline Safety Act, the pipeline industry has a very strong incentive to construct, operate, and maintain its pipelines in a safe manner. While our primary concern, of course, is the protection of human life and property, interruptions in service, loss of natural gas, damage to facilities, costly repairs and the like are also highly undesirable. One can easily see that it is in the best business interests of the industry to protect the health and welfare of the public through safe, reliable, cost effective service.

While there has been no discernable pattern to the annual number of fatalities, there has been a downward trend in the total number of pipeline failures over the past five years. It is important to note that nearly two-thirds of the failures have been caused by outside force damage, a percentage that has remained fairly constant over the years. This is generally referred to as third-party damage; that is, caused by someone or something outside the control of the pipeline owner or operator. A very common example is a pipeline being struck by a bulldozer during a construction project of some sort--excavation for a new building or sewer line. Obviously, our industry has a significant stake in trying to reduce that percentage. One of the more successful means of protecting against third party damage has been the establishment of one-call systems throughout much of the country.

Like other utilities with underground lines, interstate gas transmission companies register the location of their pipelines with the local one-call center, which frequently computerizes the information. When a developer wants to excavate large stretches of ground, he checks with the local one-call center, if one has been established in his area, which in turn alerts those utilities with lines in the area. Pipelines send safety inspectors out to mark the location of their pipelines to help prevent the builder from rupturing a gas line during excavation. Regrettably, many localities have not yet installed such a system and even in those that have, builders too often fail to use it. Our members have been working with local and state governments and with other utilities and contractor groups to expand the system and make it more effective.

Pipeline companies also conduct extensive public information programs to alert the public to the importance of pinpointing pipeline locations before digging near any right-of-way. In addition, pipeline operators systematically patrol their lines, by air and, where feasible or necessary, by motor vehicle and on foot.

As additional evidence of our industry's strong commitment to safety, we also support an on-going safety related research program. Our members not only fund research within their own companies, but they also contribute to the Pipeline Research Committee (PRC), an industry group formed to sponsor and direct basic, developmental, and applied research aimed at optimizing technical aspects of the natural gas transmission industry. In 1983 and 1984, $3 million and $3.2 million respectively, was spent by the PRC on safety related research, covering such areas as improved pipeline welding, nondestructive testing of pipelines, detection and prevention of pipeline corrosion, measurement of stress, and metallurgical factors affecting line pipe performance. The 1985 PRC budget contains $3.4 million for continuing research in these areas. In addition, the Gas Research Institute (GRI), a broader research group engages in safety related research oriented more toward the distributor segment of the business. The GRI spent $3.4 million in 1983 and $4.2 million in 1984 and has programmed $4.3 million in 1985 for such research. Its research includes liquefied natural gas (LNG) storage, leak detection and repair, odorant management, evaluation and improvement of plastic piping materials, assessment of excess flow control valves, improved effectiveness of cathodic protection, and improved excavation methods. GRI has received some cofunding in the LNG storage area from the Departments of

Energy and Transportation and over $1.0 million a year directly from industry, primarily for leak detection and LNG storage.

Pursuant to an amendment attached to last year's reauthorization legislation by Representative Michael G. Oxley our members have recently completed and submitted to DOT a survey of all their pipelines which were constructed before 1940. From the reports we have received, it appears that the pre-1940 pipelines are as operationally safe as the pipelines constructed since then. This reflects the fact that the age of a pipeline is not necessarily a safety factor. In making the determination to replace a pipeline segment, age of the pipe is just one of many factors used by the operator to reach a decision. Other factors used include the leak and maintenance history of the segment, changing demographics of the area, current throughput capacity, and anticipated future throughput requirements. Contrary to popular opinion, in the case of pipelines, old does not necessarily mean obsolete or unsafe.

I believe the DOT is better equipped than we are to address the adequacy of funding for DOT management of the federal pipeline safety program and the State grant-in-aid program. It is apparent to us that the Federal-State cooperative program, managed by DOT, is working. INGAA strongly supports continuation of this partnership. However, we think some improvements may be made by setting some basic evaluation criteria to encourage the States to improve their programs and by establishing a requirement for all Federal and State inspectors to attend a comprehensive training program at the Transportation Safety

Institute. This would improve the uniformity of enforcement for the pipeline operator.

In the area of DOT management of the program, we have seen greatly improved utilization of the two technical pipeline safety standards committees (gas and hazardous liquids). They are now more actively involved in reviewing proposed regulatory changes throughout the rulemaking process. In addition, within the past six months, the committees have met twice in joint session to assist DOT in an overall evaluation of the pipeline safety program. This had not been done before and we see this as an important step forward in utilizing the varied expertise and experience of the members of those committees to improve management of the program.

The pipeline industry remains dedicated to providing a safe service to the public. The safety record of the interstate natural gas pipelines offers prima facie evidence that the current level of regulation of pipeline operations effectively ensure this safe service. We urge the Subcommittee to reauthorize the Natural Gas Pipeline Safety Act to allow the Department of Transportation and the States to continue to provide the enforcement authority that has proven effective to date.

At its hearing on April 30, the Subcommittee received testimony on the problem of discriminatory property taxes being levied against interstate natural gas pipelines. The testimony documented both the extent of this discrimination and the inadequacy of remedies now available at the state level. Because taxes are a component of a pipeline's cost of service, natural gas consumers are now forced to bear the cost of these unfair assessment practices.

INGAA urges the Subcommittee to include in its reauthorization bill a provision granting natural gas pipelines engaged in interstate commerce access to Federal courts where such disputes can be adequately addressed. Congress has already granted such statutory relief to other modes of interstate transportation. The evidence demonstrates that similar treatment needs to be afforded the interstate transmission of natural gas.

We thank you for the opportunity to submit the views of our membership upon this subject.

Submitted By:

Jerome J. McGrath
President

Enclosure

National Transportation Safety Board
Washington, D.C. 20594

Safety Information

HOLD FOR RELEASE: Sunday, May 13, 1984 SB 84-18

HIGHWAY, TRANSPORT FATALITIES DOWN FOR FOURTH YEAR, BUT DECLINES ARE FAR BELOW 1982

Fatalities on United States highways and in all modes of U.S. transportation declined in 1983 for the fourth consecutive year, but the reductions were far below those registered in 1982, according to preliminary statistics released today by the National Transportation Safety Board.

The highway death toll last year was 42,500, down 3.4 percent from the 44,018 highway fatalities in 1982. The 1982 total had been almost 11 percent below the previous year. Highway fatalities historically account for more than 90 percent of all transportation deaths.

There were 46,115 fatalities in all of U.S. transportation last year. This was a 3.8 percent reduction from the 1982 transportation toll of 47,936.

Safety Board Chairman Jim Burnett, in releasing the statistics for the May 13 opening of Transportation Week, commented:

"About 1,500 fewer persons died on our highways in 1983 than in 1982. But that reduction in a terrible highway toll had been more than 5,000 in 1982. Today, we still are killing more than 42,000 persons a year -- an average of 115 every day.

"Clearly, our highway safety progress has only begun, and there is obvious danger that the downward fatality trend will be halted or even reversed. Until we are far more successful in getting drunk drivers off the road, and getting many more vehicle occupants to use seat and shoulder belts, our highway safety record will continue to be dismal."

All modes of transportation showed reductions in 1983 fatality totals. Deaths on major U.S. airlines plummeted from 235 to 15, offsetting slight increases in commuter, air taxi and general aviation fatalities. Grade crossing deaths decreased by five percent to 575; it was the fifth consecutive year of decline since 1,064 persons died at grade crossings in 1978.

Pipeline fatalities last year dropped from 31 to 16. Rail deaths were down from 596 to 547, or 8.2 percent. Although commercial marine fatalities were down by 48 percent to 82, recreational boating losses rose from 1,171 to 1,240, offsetting the commercial marine reduction.

The preliminary 1983 transportation fatality statistics are detailed in the attached table and pie chart:

	1982	1983
Highway*		
Passenger Cars	23,330	22,206
Pedestrians	7,235	6,800
Pickup Trucks and Vans	6,325	5,939
Large Trucks	789	791
Motorcycles	4,453	4,065
Pedalcycles	800	818
All Other	1,086	1,881
Total	44,018	42,500
Grade Crossings	607	575
Railroad		
Intercity: Passengers	9	4
Employees on Duty	74	60
Pedestrians and Others	429	434
Rail Rapid Transit: Passengers	8	39**
Employees on Duty	1	1
Pedestrians and Others	75	9**
Total	596	547
Marine		
Commercial	158	82
Recreational	1,171	1,240
Total	1,329	1,322
Aviation		
Airlines***	235	15
Commuter and Air Taxi	71	73
General Aviation	1,049	1,067
Total	1,355	1,155
Pipeline		
Gas	31	~~11~~ 10
Liquids	0	~~5~~ 6
Total	31	16
GRAND TOTALS	47,936	46,115

* All fatality totals include only drivers or other occupants of that type of vehicle.

** New reporting system counts as passengers, 34 persons killed while passing between cars, or in other "unauthorized areas." In 1982 such fatalities were classified as "pedestrians and others."

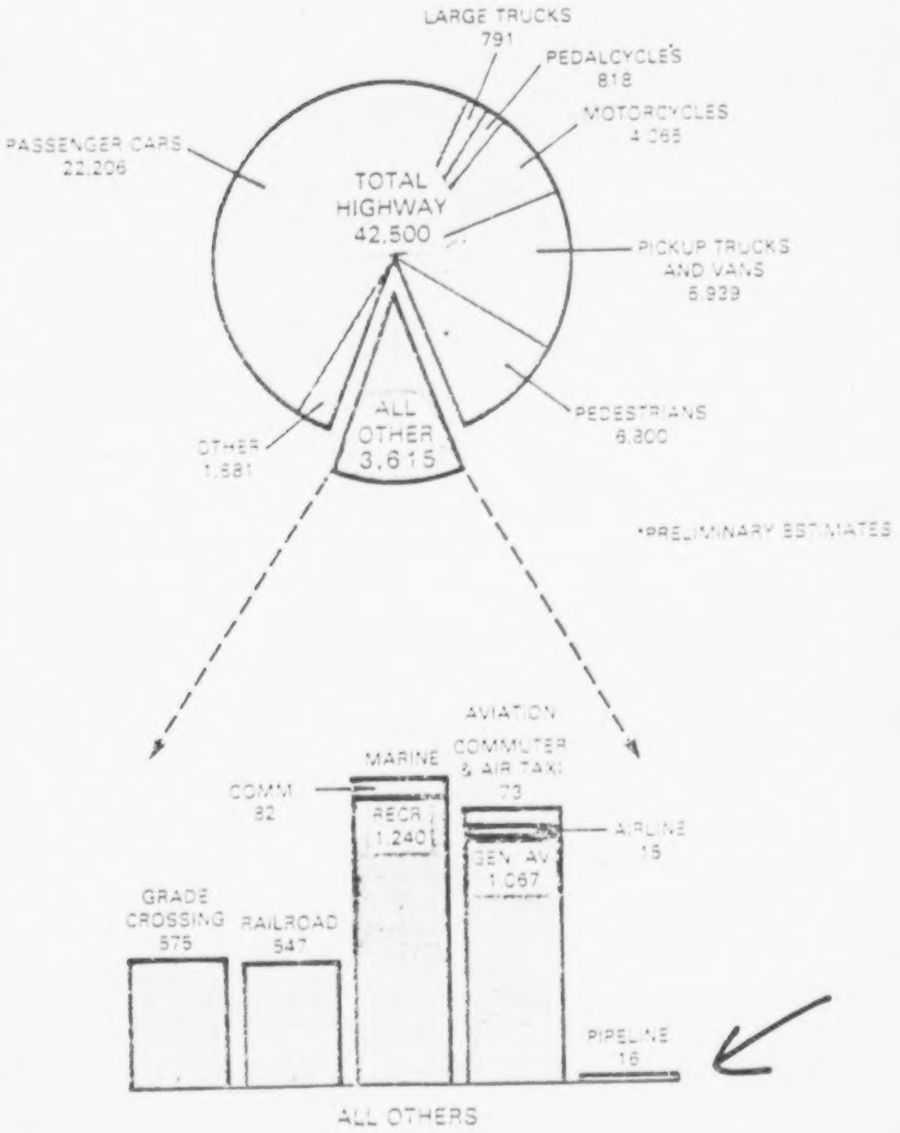
*** Does not include 6/2/83 accident, Cincinnati, OH, Air Canada, a foreign carrier.

-o0o-

Press Contact: Brad Dunbar
202/382-6605

NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C. 20594

*TRANSPORTATION FATALITIES**
46,115 IN 1983



*PRELIMINARY ESTIMATES

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 17, 1985

Honorable Glenn M. Anderson
Chairman, Subcommittee on
Surface Transportation
Committee on Public Works
and Transportation
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the invitation to testify on Tuesday, April 30, at a hearing of the Surface Transportation Subcommittee to discuss an amendment which would eliminate alleged state tax discrimination against gas pipelines. Due to the complexity of this issue, the short time notice of the hearing, and a very busy Commission agenda, I regret I was unable to supply a witness to testify on the legislation for the April 30 hearing.

However, I am enclosing a copy of testimony on the same matter presented last year by Ken Williams, Director of the Office of Pipeline and Producer Regulation, at a Senate hearing. In addition, I will be happy to respond for the record to any written questions of the Subcommittee Members.

I stand ready to be of assistance in any way possible.

Sincerely,

Raymond J. O'Connor

Raymond J. O'Connor
Chairman

Enclosure

cc: Honorable Bud Shuster
Ranking Minority Member

TESTIMONY OF KENNETH A. WILLIAMS

DIRECTOR, OFFICE OF PIPELINE AND PRODUCER REGULATION
FEDERAL ENERGY REGULATORY COMMISSION
SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
SURFACE TRANSPORTATION SUBCOMMITTEE
September 28, 1984

It is a pleasure to appear before the Surface Transportation Subcommittee and to offer whatever assistance I can to your deliberations on the proposed legislation in S.2932. My appearance is on behalf of Raymond J. O'Connor, Chairman of the Federal Energy Regulatory Commission. It is my Office that has the technical responsibility for evaluating the costs either incurred or expected to be incurred by interstate natural gas and oil pipelines for the purpose of determining their appropriate rate treatment. To the extent that the technical staff questions whether certain costs should be included in the rates of a pipeline company, it generally raises these matters as issues in formal proceedings. Formal proceedings may be instituted as the result of rate change filings by interstate pipelines or through investigations initiated by the Commission. Technical staff participates in formal proceedings through discovery, the presentation of exhibits and testimony, cross examination of witnesses and the submission of briefs. The record made in these formal proceedings ultimately provides the Commission with the information necessary to resolve issues on their merits.

The Commission's approach toward oil pipeline rate regulation is currently under review in the Federal courts. Therefore, I would like to confine my testimony to the rate regulation of natural gas pipelines. Moreover, I would like to first address the methodology employed by the Commission in determining the costs, including taxes other than income taxes, properly includable in gas pipeline rates.

Under Section 4 of the Natural Gas Act, no natural gas pipeline company can change its rates without first filing a notice with the Commission and the public. In implementing this section of the Act, the Commission imposed detailed filing requirements to support the proposed rate levels. Each element of cost must be clearly identified and supported. For ratemaking purposes, the Commission employs a "test period" approach which requires the pipelines to file twelve months of actual experience with adjustments for the subsequent nine months. Each element of cost is evaluated against both the actual experience and the adjustments to that actual experience. Taxes such as ad valorem taxes are generally summarized by state in the filings, but more detailed information is obtained during the investigation and discovery phases.

For the most part, the initial evaluation of taxes such as ad valorem taxes is to determine the reasonableness of the projected level of such taxes. If it appears that the taxes attributable to certain state or local taxing authorities may be excessive, the pipeline is required to support the level of taxes paid or payable

The pipeline may cite as support the tax rate or the method of assessing value employed by the taxing authority. However, the Commission will look first to the pipeline to ensure that the taxes paid or expected to be paid are reasonable and do not discriminate against the company and its customers. Most pipelines have tax departments which have the expertise to challenge the taxes levied by individual taxing authorities. It is unreasonable to expect that the Commission would have either the staff or the data necessary to challenge the taxes levied by the hundreds of taxing authorities that are involved with each pipeline system. That is not to say that the Commission is without recourse where state and local taxes are excessive or discriminatory; it could possibly challenge such taxes as discriminating against interstate customers and consumers. However, the Commission has found it more effective to impose upon the pipelines the obligation to ensure that the taxes paid are not excessive or discriminatory and to preclude the recovery of taxes that do not meet these criteria.

Natural gas pipelines typically recover taxes other than income taxes through general rate change filings. This means that absent such filings, the pipelines are unable to recover increases in these taxes, all other things being equal. The Commission has not been willing to permit the tracking of changes in state and local taxes primarily because to do so, would reduce the incentive for pipelines to resist the payment of excessive or discriminatory taxes.

To the extent that state or local taxes discriminate against interstate pipelines, there exists the possibility that customers served by these pipelines will incur costs that should more appropriately be borne by state and local taxpayers. If the pipelines are unable to recover these taxes, then their stockholders may ultimately be required to absorb the under-recovery. Under either event, there will be an unreasonable burden imposed as the result of discriminatory taxing practices.

That concludes my direct presentation. I will be happy to answer any questions.